United States Court of Appeals
for the
District of Columbia Circuit

TRANSCRIPT OF RECORD

[redacted]

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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States Court of Appeal
For the
District of Columbia
ILED DEC 1 1961
Joseph W. Stewart
CLERK

No. 16,668

RICHARD B. WRIGHT and
THE WRIGHT TOOL AND FORGE COMPANY,
Appellants,

v.

DAVID L. LADD, Commissioner of Patents,
Appellee.

Appeal from the United States District Court for the District of Columbia

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Appeal from the United States District Court for the District of Columbia

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JOINT APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD B. WRIGHT, 42 East State Street, Barberton, Ohio
Plaintiff,

v.

ROBERT C. WATSON, Commissioner of Patents,
Washington 25, D. C., *Defendant.*

Civil Action No. 235-60

(To Compel Issuance of Design Letters Patent)

Complaint

Plaintiff for his complaint states as follows:

1. That this action arises under the Patent Act of 1952, and more particularly, under Section 145 of Title 35 of the United States Code.

2. That the plaintiff, Richard B. Wright, is a United States citizen who resides in Barberton, County of Summit, State of Ohio, and whose postoffice address is 42 East State Street, Barberton, Ohio.

3. That the defendant, Robert C. Watson, is officially a resident of the District of Columbia and is sued in his official capacity as United States Commissioner of Patents.

4. That the plaintiff, Richard B. Wright, is the original, first and sole inventor of the subject matter described and claimed in an application for United States Letters Patent filed in his name in compliance with the patent laws of the United States on September 10, 1956 for Design for Socket Wrench, which application was assigned Serial No. D-42,897.

5. That said application Serial No. D-42,897 filed by the sole applicant and inventor Richard B. Wright, plaintiff herein, was duly filed and prosecuted in accordance with

the statutes of the United States and the Rules of Practice of the United States Patent Office in such cases made and provided, but as will more fully appear from a duly authenticated copy of the file wrapper and contents of said application Serial No. D-42,897 which is ready to be produced in Court and of which profert is hereby made, the Board of Appeals of the United States Patent Office on November 25, 1959 erroneously refused to allow in said application the design claim.

6. That as a result of the aforesaid erroneous decision of the Board of Appeals the defendant has refused and still refuses to grant plaintiff Letters Patent of the United States on said application Serial No. D-42,897 including the design claim, although said plaintiff is lawfully entitled thereto.

7. That no appeal to the United States Court of Customs and Patent Appeals from the aforesaid decision of the Board of Appeals has been taken.

WHEREFORE, plaintiff prays this Honorable Court for a decree authorizing and directing the Commissioner of Patents to issue to plaintiff Letters Patent of the United States on the above-identified application including the design claim, upon the filing in the United States Patent Office of a certified copy of such an adjudication and upon compliance with the requirements of the law in such cases made and provided.

RICHARD B. WRIGHT, *Plaintiff*

By MARTIN E. HOGAN, JR.
Stevens, Davis, Miller & Mosher
325 Munsey Building
1329 E. Street, N. W.
Washington 4, D. C.
Attorneys for Plaintiff

January 22, 1960

Answer to the Complaint

To the Honorable the Judges of the United States District Court for the District of Columbia.

1, 2, 3. The defendant admits the allegations of paragraphs 1, 2, and 3 of the complaint.

4. The defendant denies the allegations of paragraph 4 of the complaint.

5. The defendant admits that application Serial No. D-42,897 filed by the sole applicant Richard B. Wright, plaintiff herein, was duly filed and prosecuted in accordance with the statutes of the United States and the Rules of Practice of the United States Patent Office in such cases made and provided, but the defendant otherwise denies the allegations of paragraph 5 of the complaint.

6. The defendant admits that he has refused and still refuses to grant plaintiff Letters Patent of the United States on application Serial No. D-42,897 including the design claim, but the defendant otherwise denies the allegations of paragraph 6 of the complaint.

Further Answering, the defendant asserts that the plaintiff is not entitled to a design patent on his application involved in this civil action containing the single claim therein for the reasons given and in view of the references cited in the action of the Examiner dated January 28, 1957, the final rejection, the Examiner's answer and the decision of the Board of Appeals in that application. Profert hereby is made of copies of the said action, final rejection, Examiner's answer, decision of the Board of Appeals and references.

Respectfully submitted,

C. W. Moore
Solicitor, United States Patent Office
Attorney for Defendant

March 10, 1960

I hereby certify that two copies of the foregoing ANSWER TO THE COMPLAINT were mailed today to Stevens, Davis, Miller & Mosher, Munsey Bldg., Washington 4, D. C., attorneys for the plaintiff.

C. W. MOORE
Solicitor

Notice

CLERK'S OFFICE

United States District Court for the District of Columbia

Washington, June 19, 1961

Dear Sir:

WRIGHT V. LADD, CA 235-60

The Court will find for the Defendant. The attorney for Defendant is to submit proposed Findings of Fact and Conclusions of Law, as well as a proposed order.

MATTHEWS, J.

HARRY M. HULL,
Clerk.

Findings of Fact

1. Plaintiffs Richard B. Wright and Wright Tool and Forge Company brought this action under Title 35 of the United States Code, Section 145, seeking a judgment from this Court authorizing the defendant, Commissioner of Patents, to issue letters patent to the plaintiffs on an application for design patent, Serial No. D-42,897, filed September 10, 1956, entitled "Socket Wrench," in which plaintiff Richard B. Wright is named the inventor and of which plaintiff Wright Tool and Forge Company is assignee.

2. The application in suit relates to a design for a socket wrench.

3. The claim of the application is for the ornamental design for a socket wrench as shown in the application drawings. As illustrated in the application drawings, the socket wrench has a cylindrical external shape, a generally square hollow internal configuration, and a shallow V-shaped groove in the middle of each of the four sides of the internal surface, the grooves extending from one end of the socket for approximately one-half the length of the socket. The surfaces at the ends of the socket are shown as concave or dished.

4. Defendant relies upon the following prior patents and publication having the disclosures described to show that the claimed design is not patentable:

(a) The patent to Orey *et al.*, No. 2,549,515, granted April 17, 1951, discloses a socket wrench comprising a detachable handle and socket. The socket has a cylindrical external shape and a hole extending through the socket from end to end. Toward one end of the socket the hole provides a generally cylindrical internal surface formed with keyways to fit over corresponding spline keys provided on the handle. Toward the other end of the socket the hole has flat sides for receiving the nut to be driven.

(b) The patent to Hanes *et al.*, No. 838,109, granted December 11, 1906, discloses a ratchet wrench comprising a detachable handle and a nut-engaging bit or socket. The nut-engaging bit or socket has a generally square hollow internal configuration, and has, in the middle of each of the four sides of the internal surface toward one end of the socket, a shallow V-shaped groove extending about one-half the length of the socket. The V-shaped grooves allow the socket to fit either a hexagonal or a square nut. The four sides of the internal surface at the other end of the socket fit a square end provided on the handle. The external shape of the socket is generally square for half the length of the socket and generally cylindrical for the remaining half of the length.

(c) The Grenat patent, No. 2,605,665, granted August 5, 1952, discloses a wrench having integral jaw members provided with serrated internal sockets. As shown in the patent drawing, the serrated internal sockets present the appearance of a square hole having a V-shaped groove in the middle of each of the four sides.

(d) "Catalog TR," issued May, 1951, by Snap-On Tools Corporation of Kenosha, Wisconsin, discloses a concave or dished end surface on a socket for socket wrenches.

5. The presence of the dished depressions at the ends of plaintiffs' socket does not significantly affect the overall appearance of the claimed design.

6. The Orey *et al.* patent shows that the cylindrical external shape of the claimed design is old. The Hanes *et al.* patent shows that the generally square hollow internal configuration and the shallow V-shaped grooves of the claimed design are old. The Grenat patent shows that the V-shaped grooves in the sides of the square opening of the claimed design are old.

7. "Catalog TR" of the Snap-On Tools Corporation shows that in the claimed design a dished end is an old feature.

8. Every feature of the claimed design is individually old, and plaintiffs' claimed design is a combination of old forms and configurations.

9. To provide the socket member shown in the Orey *et al.* patent with a generally square inner hole having shallow V-shaped grooves toward one end of the hole would have been obvious, at the time the plaintiff Wright designed his socket, to a person having ordinary skill in the art of de-

signing socket wrenches, in view of the patents to Hanes *et al.* and Grenat.

10. To provide the socket member shown in the Orey *et al.* patent with a generally square hole having shallow V-shaped grooves toward one end of the hole and dished depressions at the ends of the socket member would have been obvious, at the time the plaintiff Wright designed his socket, to a person having ordinary skill in the art of designing socket wrenches, in view of the patents to Hanes *et al.* and Grenat and the publication, "Catalog TR," of the Snap-On Tools Corporation.

11. In the claimed design there is produced no unexpected or unobvious ornamental appearance which is due to the combining, or putting together, of the old forms and configurations.

12. In the claimed design each of the old forms and configurations presents nothing more than the appearance each presented by itself in the prior art.

13. In plaintiffs' socket the generally square hollow internal configuration with the V-shaped grooves at one end is provided for the purpose of fitting square and hex nuts interchangeably at one end of the socket, and for the purpose of fitting a square male connecting member of the handle at the other end of the socket.

14. In plaintiffs' socket the internal configuration is due solely to functional requirements.

15. It has not been shown that the commercial success of plaintiffs' socket was achieved as the result of the claimed appearance, or design, of the socket.

16. The differences between the claimed design and the prior art are such that the claimed design as a whole would have been obvious at the time plaintiff Wright made his design to a person having ordinary skill in the art of designing socket wrenches.

CONCLUSIONS OF LAW

1. Where a design is a combination of forms and configurations which are individually old, and where there is no evidence that, in the claimed combination, those old forms and configurations produce some unexpected or unobvious ornamental appearance which is due to the combining, or putting together, of those old features, it has not been established that the design is patentable.

2. Where evidence shows commercial success of a device, but the evidence does not justify the conclusion that the success attained was the result of the appearance of the device, such evidence is irrelevant to the question of patentability of the design of the device.

3. The plaintiffs are not entitled to a patent on the design claimed in their application for patent, Serial No. D-42,897.

4. The complaint should be dismissed.

BURNITA SHELTON MATTHEWS
Judge

Judgment

This action came on to be heard at this term, and thereupon upon consideration thereof, it is this 1st day of July, 1961

ADJUDGED that the complaint be and it is hereby dismissed, with costs against plaintiffs.

MATTHEWS, J.
Judge

APPROVED AS TO FORM:

....
Attorney for Plaintiffs

June 30, 1961

I hereby certify that two copies of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT were handed today to the attorneys for the plaintiffs, Stevens, Davis, Miller & Mosher, 325 Munsey Bldg., Washington, D. C.

C. W. MOORE
Solicitor

1 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD B. WRIGHT and
THE WRIGHT TOOL AND FORGE COMPANY, *Plaintiffs*

v.

DAVID L. LADD, Commissioner of Patents, Defendant.

Civil Action No. 235-60

Washington, D. C.
Monday, May 8, 1961

The above-entitled action came on for trial on the merits, before the HONORABLE BURNITA SHELTON MATTHEWS, United States District Judge, at 10:15 o'clock a.m.

APPEARANCES:

On behalf of the Plaintiffs:
MARTIN E. HOGAN, JR. ESQ.

On behalf of the Defendant:
JOSEPH F. NAKAMURA, ESQ.

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3 PROCEEDINGS

The Clerk: Wright vs. Ladd.

The Court: Is the plaintiff ready to proceed?

Mr. Hogan: Yes, Your Honor.

This case is a design patent case and we have here for the Court the certified copy of the application.

The Court: Very well. You have no objection to this?

Mr. Nakamura: No objection.

The Court: That may be admitted as Plaintiff's Exhibit 1.

(Certified copy of File Wrapper and Contents, Serial No. 42897, was marked Plaintiff's Exhibit No. 1 and received in evidence.)

Mr. Hogan: This is a civil action under 35 U.S.C. 145, where the Commissioner of Patents has refused to grant an application for letters patent for the design of a tool, a socket wrench, and we have the plaintiff here and we will demonstrate to the Court some of the equipment involved so you will get a little better picture of the type of thing we are talking about.

The prosecution was normal through the Patent Office and when it was refused by the Examiner, it went to the Board of Appeals and the Board of Appeals affirmed the Examiner.

4 The Court: Why do they claim you are not entitled to the patent? What reason do they give?

Mr. Hogan: On prior art and we will discuss that through Mr. Wright, our witness.

The Court: Do you want to make an opening statement?

Mr. Nakamura: Yes, Your Honor please, I would like to make a short statement which I think might help and I have the customary folder of Patent Office exhibits which, if you would like, I will pass up at this time.

The Court: Very well. You have no objection to that, do you? Do you desire to examine it?

Mr. Hogan: No objection, Your Honor.

The Court: Very well, that may be marked Defendant's Exhibit No. 1 for identification.

(Patent Office Folder of Exhibits was marked Defendant's Exhibit No. 1 for identification.)

The Court: Do you want to make any further statement?

Mr. Nakamura: I could only go through the Board's action and review the grounds for the refusal of the patent.

The Court: That might be better at the end of the case, unless you wish to make an opening statement.

Mr. Nakamura: No, thank you.

5 Thereupon,

Richard B. Wright

plaintiff, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hogan:

Q. Will you state your full name? A. Richard B. Wright.

Q. And what is your business address? A. 42 East State Street, Barberton, Ohio.

Q. What is your occupation? A. Vice President and Chief Engineer of Wright Tool and Forge Company.

Q. Is the invention here in issue assigned to the Wright Tool and Forge Company? A. Yes, it is.

Q. How long have you worked at Wright Tool and Forge Company? A. Nine years, full time.

Q. Are you a graduate engineer? A. Yes, from the California Institute of Technology.

Q. How many people are employed by Wright Tool and Forge Company? A. About eighty.

Q. What are the products of Wright Tool and
6 Forge? A. The products consist entirely of socket
wrenches except for one other minor wrench which we also make, one other minor wrench which we happen to make, a wheel puller, which is not strictly a socket wrench but it is a very small percentage of our socket wrench.

Q. When you say exclusively engaged in the manufacture of socket wrenches, by that you mean socket wrenches— A. We manufacture socket wrenches, the handles and attachments, and we assemble quite a few of them in sets and sell them in that fashion.

Q. What is your approximate annual gross? A. About one million dollars.

Q. In your company, who is generally responsible for the design of socket wrenches? A. I am.

Q. Do you have consultants? A. Lately, we have used an industrial design firm in Cleveland.

Q. But at the time this invention was made, you were responsible for the design? A. That is right.

Q. And you did design this socket wrench here in issue? A. Yes, I did.

Q. When you designed a socket wrench, which is a known commodity, what do you strive for, what do you look
7 for, what do you endeavor to achieve? A. Well, we were seeking to achieve something that would differentiate our product and our line as much as possible from competition. We have a lot of competition, we all make pretty similar products, so we wanted something that was different. We wanted something that could be recognized as being different, something with eye appeal. We have some differences in our product in our manufacturing methods and our selection of materials, they are advantages but they are primarily hidden, so we were looking for something that would show up to the man in the store, to the buyer.

Q. Have you adopted a name for this particular wrench in issue? A. Yes, we call it the Ten Point Socket Wrench.

The Court: What is that?

The Witness: Ten Point.

The Court: Ten Point?

The Witness: Yes.

By Mr. Hogan:

Q. In this box, you have samples of the Ten Point Socket? A. Yes.

And you have samples of conventional sockets? A. That is right.

Q. And does your company make both the conven-
8 tional and the Ten Point? A. Yes, we do.

Q. Will you point out a Ten Point and a conventional? A. This is the 12 point socket, here is a 6 point socket.

The Court: You are lowering your voice when he stands close to you.

The Witness: There is the Ten Point Socket and the 6 point and 12 point.

The Court: You say you make a conventional socket? Which of these is the conventional?

Mr. Hogan: May we hand these to Your Honor?

(Three sockets were handed to the Court.)

The Court: This one is what?

The Witness: That is the Ten Point Socket.

The Court: Is there something on here that tells you what it is?

The Witness: The name "Ten Point" is on the side.

The Court: Yes. And this one is?

The Witness: 12 point socket, that is not so labeled, it is the customary design and the trade recognizes it as a 12 point socket. And that is a 6 point socket, again not labeled because it is a customary design and the trade recognizes it.

9 By Mr. Hogan:

Q. When you designed this Ten Point Socket, what did you do with it? What did you do to promote it? A. Well, we did nothing with it for a while because we didn't know whether or not it would sell and we then finally did put it on sale and found that it did indeed sell, and then we have increased our promotion of it.

Q. Do you feel that this Ten Point Socket Wrench has the attributes that you, as a designer, would look for in a tool, the eye appeal, distinctiveness, customer appeal? A. It certainly has proven so.

Q. What is the relative selling price between the Ten Point and the conventional design? A. The Ten Point design sells for a premium which varies with the size of the socket.

Q. Would you explain what you mean by that? A. It sells for more than the conventional design in the same sizes.

Q. When it sells for more than the conventional design, does that impair the sales? A. Well, we have not tried selling it on any other basis because we have been quite satisfied with the sales at the present level.

Q. Can you tell us what the volume of sales of your Ten Point have been? A. Well, the last two years, I had a survey made which showed that we sold 172,000 Ten Point Sockets.

Q. What would the dollar value represent? A. Some were sold in sets and some were sold loose and there was a discount on the sets, but estimating the dollar value based on the loose tool price, it was within a few per cent, it would be about $93,000.

Q. Could you indicate for us then, from comparative figures, the acceptance—does that indicate public acceptance? A. Yes, we are quite pleased with that amount of sales and think it indicates public acceptance, and it is plus business, of course, added business for the company.

Q. I hand you here page 1071 from the Montgomery Ward catalog. Would you describe the socket marked on that page? A. That is a set of Ten Point Sockets which we manufacture and sell to Montgomery Ward and have sold them for several years. I think that they have sold them in sufficient volume to continue to buy them, for quite a period of time.

Mr. Hogan: We will mark this as an exhibit.

The Clerk: Plaintiff's Exhibit No. 2 marked for identification.

(Ward Catalog Page 1071 was marked Plaintiff's Exhibit No. 2 for identification.)

The Witness: The set consists of eleven Ten Point Sockets and the ratchet wrench or handle to turn them 11 and the box to enclose them.

By Mr. Hogan:

Q. A ratchet wrench handle that goes with the sockets, to turn the sockets? A. Yes, there are no other sockets in the set.

Q. Does Montgomery Ward sell the so-called conventional type wrenches? A. Yes.

Q. Are they listed on that page? A. Next to it in the catalog is a—

The Court: Do you mean this one called "¼-in. Drive Socket Set" or what?

The Witness: The Ten Point set is the one labeled No. 7 in the illustration and the copy on that is to the left, the description of that is to the left. They sell a set which is of standard design which is fairly similar to it, just below in the shaded area, in the box which is labeled 9, the illustration is labeled 9 and the socket is labeled 9, in the upper righthand corner of the page. Then the rest of the page is pretty well devoted to other sockets, all in conventional design.

By Mr. Hogan:

Q. To clear this up, the two sets that are circled, marked on the page, are the Ten Points manufactured by 12 Wright Tool and Forge? A. No, only the one is the Ten Point, the upper one.

Q. The upper righthand one? A. The upper righthand is Ten Point, I circled both of them to show the Ten Point sells side-by-side with a standard socket, even though the price is higher.

Q. The one in the upper righthand corner is the one manufactured by Wright Tool and Forge and others on the page are illustrations of conventional socket designs? A. Yes.

Q. And your point is that even though the price is higher, Ward lists them all and your company sells both? A. In this case, we are not selling these other sockets that are illustrated; the only item we are selling on this page is the Ten Point Socket.

The Court: I am not sure that I have followed what you said. This figure over here which is circled, marked 9 right here, that is the one that you say is your Ten Point?

The Witness: Well, no, it is marked 7, the illustration is 7. The upper righthand corner is the illustration of the set. Now, the description for that illustration is to the left—when I originally drew that circle around it, I thought it was below. The description is under the heading 7, it begins with "Dual-Purpose Socket Set. Powr-Kraft 13."

Mr. Hogan: Did you make a mistake in drawing your circle?

13 The Witness: Yes, I tried to erase it, but the copying machine caught the erased line, apparently, about as well as what I had not erased.

The Court: The description is marked 7?

The Witness: The description is marked 7 and the illustration is marked 7.

The Court: What is this 9?

The Witness: This 9 is a comparable set, fairly comparable set of conventional sockets.

By Mr. Hogan:

Q. What you are endeavoring to point out is that description 7 goes with the picture to the right of it? A. Yes.

Q. And the description 9 goes with the picture to the left of it? A. That is right.

Q. And the description 7, for the Ten Point Wrench, sells for $15.95 and the conventional set sells for $8.94? A. Yes.

Mr. Hogan: Is that clear, Your Honor?

The Court: Yes.

By Mr. Hogan:

Q. Does Ward place orders? How do you work with Montgomery Ward? A. We manufacture the sockets and
place them in our stock and then Ward sends in a
14 series of relatively small orders as their various
warehouses exhaust their stocks.

Q. Is this one of the orders? A. Yes, this is a copy of a typical order.

Q. For how many pieces is that? A. This is for 50 sets.

The Court: Do these conventional socket sets have this dual purpose? You talk about a dual purpose socket set.

The Witness: No, that is a characteristic of the Ten Point as shown in that copy.

The Court: But the conventional doesn't have that?

The Witness: The conventional has somewhat different characteristics.

The Clerk: Plaintiff's Exhibit No. 3 marked for identification.

The Court: Have you shown it to Mr. Nakamura?

Mr. Hogan: Yes, Mr. Nakamura has a copy. That is intended to show the way in which the Montgomery Ward orders out of stock from Wright Tool and Forge, sets from time to time.

(Ward Purchase Order was marked Plaintiff's Exhibit No. 3 for identification.)

By Mr. Hogan:

Q. Have these reorders continued on a fairly regu-
15 lar basis? A. Yes, they have and Montgomery
Ward has continued to catalog the set through a number of catalogs, indicating that they are satisfied with the sales and the sales warrant catalog space.

Q. When the Examiner examined your application, he cited certain patents. I hand you now copies of the three patents of record, Orey, et al, Grenat, and Hanes, et al. Do any of those resemble your design? A. None of them resemble it at all closely.

Q. Well, take them one at a time. Take, for example, Hanes, et al. Does that show a socket or a socket wrench such as you have designed? A. It shows something that looks—that has an opening somewhat similar to the design but the rest of the socket is vastly different.

Q. Is it a socket or a socket wrench? A. No, it is not, actually.

Q. What is it? A. It is simply a ratchet wrench.

The Court: It is a what?

The Witness: It is a ratchet.

The Court: Ratchet?

The Witness: Ratchet wrench, it is a type of wrench, actually I think it is an obsolete type of wrench. It is not in current sale or use now.

16 By Mr. Hogan:

Q. Look at Orey, et al. Do you find anything in Orey, et al, that resembles your socket? A. No. It simply shows a socket, but sockets are certainly a common enough device; in fact, it doesn't resemble the sockets that are now made, very much.

Q. The Examiner, in his office action, said Grenat was cumulative, but what does it show to you? A. Nothing.

The Court: You say it doesn't show anything?

Mr. Hogan: In the design.

The Witness: I don't see the relationship between it and my design.

Mr. Hogan: I have finished my direct examination, Your Honor. If Mr. Nakamura wants to ask some questions, then I would like to resume on the design aspects of this.

Cross-Examination

By Mr. Nakamura:

Q. Mr. Wright, do you have before you a copy of the drawing in your application? A. No, I don't.

The Court: Would you like to borrow this?

Mr. Nakamura: I will see if I can operate with one copy here.

17 By Mr. Nakamura:

Q. Do you recognize this as the application drawing? A. Yes.

Q. Would you tell me if you consider that the cylindrical shape of your socket is new, do you claim that as being new? A. No.

The Court: Mr. Nakamura, you are lowering your voice. Will you read the question and answer?

(The question and answer were read by the reporter.)

By Mr. Nakamura:

Q. Secondly, Mr. Wright, would you consider or do you claim that these V-shaped grooves which extend along the middle of the four sides of the square opening in Figure 3, do you claim that they are new? A. No, they are not.

Q. Then, referring to Figure 2 which shows the reverse end—

The Court: Which one of these sketches are you referring to?

Mr. Nakamura: Your Honor, I am referring to Exhibit D in the Patent Office folder.

The Court: All right.

Mr. Nakamura: And referring now to Figure 2.

18 The Court: Yes.

Mr. Nakamura: This shows the reverse end.

The Court: Your last answer was no, wasn't it?

The Witness: Yes, those grooves have been used before.

The Court: You say they have or have not?

The Witness: They have been used before.

By Mr. Nakamura:

Q. Now, referring to Figure 2, the square opening there shown at the other end of your wrench socket, is that new? A. No, that is standard to matched standard handles.

Q. The drawing also shows that the ends are dished. Do you claim that the dished ends are new?

The Court: The ends are what?

Mr. Nakamura: Dished, concave.

The Witness: No, that is our standard socket design, that is one of the features of our socket, we have used it for a number of years.

By Mr. Nakamura:

Q. Mr. Wright, you have copies there of the references that were used by the Patent Office? A. Yes.

Q. Would you please refer to the Grenat patent
which is Exhibit A in the defendant's folder?
19 A. Yes.

Q. In Figure 1, there is shown a socket, referred to by No. 4 and in that socket an opening 6. Does that show a square opening with V-shaped grooves in each of the four sides? A. It shows a square opening with V-shaped grooves which differ significantly from the shape of the opening in the Ten Point Socket.

Q. But does it show V-shaped grooves at the four sides of the opening? A. Yes.

Q. Now, would you turn to the Hanes, et al, patent which is Exhibit B in the Patent Office exhibit. Now, you stated this is a ratchet wrench, in answer to a question asked you previously, am I right? A. That is what Mr. Hanes chooses to call it.

Q. Is a wrench socket used with ratchet wrenches?

The Court: What kind?

Mr. Nakamura: Is a wrench socket used in ratchet wrenches?

The Witness: The term ratchet wrench as used at this point is probably not in accordance with modern usage. When we make a ratchet wrench or sell a ratchet wrench, we sell the handle which is used to turn detachable sockets.
The socket fits the nut or bolt and the handle is used
20 to turn the socket. It would be virtually impossible
to turn the socket without a handle and the modern

ratchet wrench could not turn a nut or bolt because all it has is a square such as a half-inch male square on it; that would not fit a nut without being placed on a socket.

Q. May I call your attention to Figure 4? A. Yes.

Q. In this figure, do you see a square opening shown with shallow V-shaped grooves in each of the four sides, in the middle of each side? A. Yes.

Q. Does the opposite end of that member D have a plain square opening in it? A. The opposite member of which?

Q. The opposite end of the member D, we are still referring to Figure 4. A. The opposite end isn't shown in Figure 4.

Q. Then I might refer you to Figure 2, I believe that will clarify it for you. A. Well, I can't tell whether the back opening is a square or not.

Q. Thank you. Now, may I ask you to refer to the Orey, et al, patent which is Exhibit C in the defendant's folder. Does Figure 2 show a cylindrical wrench socket?

The Court: Show a what?

21 Mr. Nakamura: Cylindrical wrench socket.

The Witness: Yes.

By Mr. Nakamura:

Q. And does it show an opening which is circular in outline and has two keyways 6, 6? A. Yes.

Q. And does Figure 3 show that the end opposite to the one we just referred to is provided with a flat-sided opening to fit a nut? That would be Figure 3 on the same page. A. It would appear so.

The Court: Would you read that question and answer?

(The question and answer were read by the reporter.)

The Witness: There is no indication of the exact configuration of the opening and, as a matter of fact, there are some that will fit a nut that are not flat-sided.

By Mr. Nakamura:

Q. Mr. Wright, do you have a copy there of your catalog No. 57? A. No, I don't.

(The catalog was handed to the witness.)

The Witness: Now, I do.

Mr. Nakamura: Your Honor, I am referring now to the Wright Tool Catalog No. 57.

The Court: Thank you.

22 The Clerk: Defendant's Exhibit No. 2 marked for identification.

(Wright Tool Catalog No. 57 was marked Defendant's Exhibit No. 2 for identification.)

By Mr. Nakamura:

Q. Mr. Wright, referring to the cover of Catalog No. 57 of the Wright Tool and Forge Company, does this state that your Ten Point Socket will fit both hex and square nuts interchangeably? Am I right in my reading there of the words under the main illustration?

Mr. Hogan: That goes to the utility, which is not permitted in the consideration of design. I think we should know why the question is necessary.

The Court: I am sorry, I didn't hear the question because there is too much noise overhead and you are speaking too low.

Will you read the question?

(The question was read by the reporter.)

The Court: I will overrule the objection. You may answer.

The Witness: That is what the catalog says.

Mr. Nakamura: I might add at this time that my reason in asking this and going into this line of questioning is that if these features which are shown in the design drawing of the plaintiff's application are based upon features of utility, then those features may not be relied upon for patentability of appearance or design. 23

By Mr. Nakamura:

Q. To continue, Mr. Wright, on page 4 of your catalog—

Mr. Nakamura: This is page 4 of Catalog 57, Your Honor.

By Mr. Nakamura:

Q. Mr. Wright, does this page indicate the advantage of your socket, the Ten Point design for driving both or either a square or hex nut, is that the purport of this page?

The Court: Read the question.

(The question was read by the reporter.)

The Witness: That is one of the claims that we make in selling the Ten Point design and it is a true claim, and it is made on this page.

By Mr. Nakamura:

Q. And would you say the same claim is made on the page facing it? A. I haven't read this, let me read this over for a minute.

Mr. Nakamura: I am sorry, we don't have the same page.

(Mr. Nakamura conferred with the witness.)

The Witness: Oh, I see. I was in error before, in looking at another page that was bound into the catalog
24 between pages 4 and 5.

Mr. Nakamura: Referring to this separately bound-in page in Catalog 57—

The Court: Let me get that straight. Is this the page you are asking about?

Mr. Nakamura: That is the one we asked the first question about, yes.

The Court: He says he was looking at some other page and not page 4.

Is that what you said?

The Witness: Yes, I was in error in reading another page that was bound into this.

Mr. Nakamura: I will have to ask the question again with respect to page 4.

Mr. Hogan: Do you have our memorandum and trial brief? The catalog is in back of it and the page is bound in there, that is not a regular catalog page, it is a bound-in page.

The Court: There are some pages in here that are not numbered. Five is numbered.

The Witness: Four is numbered.

The Court: Four is numbered but there is something in between.

The Witness: Yes, that is what I was looking at before.

The Court: I am sorry. Suppose you find for me the page you are referring to now. I was looking at the right page, page 4, when you were asking the question but now you are passing to another page, are you not?

Mr. Nakamura: I started out with page 4 and now we are proceeding to this one (indicating).

The Court: Had you corrected what you wanted to correct about your testimony with reference to page 4, or not?

The Witness: Well, I think the same comment actually applies to the actual page 4, that we do point out the utility aspects of the design.

By Mr. Nakamura:

Q. Mr. Wright, referring to page 4 and to the page, unnumbered, which faces it and has been bound into the catalog—

The Court: You have to raise your voice a little, we can't hear you.

By Mr. Nakamura:

Q. Do either of those pages refer to the beauty or the appearance of the Ten Point Socket? A. I believe there is very little in any of our sales literature relating to the

beauty or the appearance of our tools, because it is one of those things we don't think it is proper to speak about; that nobody buys tools for beauty except the customer; that we find that the tools that are more attractive do sell better. So we talk about the utility
26 of the chrome plate, actually it is bright polish, it
has no utility, it is all for appearance. So our advertising, our literature stresses the utility and we try to mention the appearance aspects and go no further than that. As far as our value of appearance, I mentioned before that we have hired an industrial designer to do some work on appearance; even such thing as the color of a tool box, we find has a significant influence in sales, changing to a two-tone model.

The Court: The color of what kind of box?

The Witness: The color of the box that the tools are packed in has a significant influence on sales.

By Mr. Nakamura:

Q. Mr. Wright, are you familiar with the Snap-On Tools Corporation? A. Reasonably so.

Mr. Nakamura: May I have that marked for identification?

The Clerk: Defendant's Exhibit No. 3 marked for identification.

(Snap-On Tools Catalog was marked Defendant's Exhibit No. 3 for identification.)

Mr. Hogan: I want to object to Defendant's 3 marked for identification, it is not raised as a defense in the answer to the suit. It was not in the answer and it is a new issue at this time.

27 The Court: What is your purpose of offering this, Mr. Nakamura?

Mr. Nakamura: The plaintiff in his, I believe, trial brief before the Board of Appeals had mentioned the dished end.

The Court: Had mentioned what?

Mr. Nakamura: Had mentioned the dished, the concave end of the wrench as a feature of design. I bring this in at this time as evidence that the dished end is old in this art.

The Court: What do you mean by such an end? Where is it exhibited on this?

Mr. Nakamura: In the third sheet, which is page No. 25 from the catalog, there is an illustration at the top of the page, the lefthand one shows a concavity in the top which has been referred to as a dished end.

The Court: Well, now, you know this is a trial de novo and the fact that he didn't use it somewhere else wouldn't prevent him from using it here.

Mr. Hogan: Well, it does, when he has not mentioned it in the answer to the complaint. All the defenses of the Commissioner are supposed to be set forth in the answer and this is injecting a new issue into it at this time. It should have been considered by the Examiner and by the Board of Appeals, or if the Commissioner wanted to introduce it as new evidence or a new defense, it
28 should have been in the answer or in an amended answer.

The Court: You claim what he is trying to show by this isn't claimed as a defense?

Mr. Hogan: As a defense in this case.

The Court: What are you trying to show by this? You say these ends, these features are not new?

Mr. Nakamura: They are not new, yes.

The Court: Didn't you claim that?

Mr. Nakamura: This merely supports the Board's statement.

The Court: Did you claim that, that this was not new?

Mr. Hogan: This is the first time.

Mr. Nakamura: I believe it has been stated it is an old feature. What the Board has done is say these curved or dished ends are rather insignificant in their design effect, they have no real effect on the over-all appearance. Now, I know that there is a case in which the question has arisen where the defendant brought in additional references at trial and the allegation was made there should have been an amendment or there should have been a stated defense in the answer, but that was not required; but if it is required, I would of course at this time offer to amend our answer and I might refer to a couple cases on that point, if necessary.

Mr. Hogan: Our contention is, Your Honor, it
29 would be error, in view of the fact they have not amended the answer, to take into consideration a new element in the answer at this time. We haven't had an opportunity to examine it, we don't know exactly what the merits are or what our reply to it would be. Furthermore, I do not think it contributes a thing to it.

The Court: You don't think what?

Mr. Hogan: I don't think it contributes anything to the issue before you. You have before you samples of the various sockets up there and they show dished ends.

The Court: You are claiming that you have a new design?

Mr. Hogan: That is right.

The Court: They are claiming that you don't.

Mr. Hogan: They are picking it to pieces, element by element, and saying we find this here, that there, and the other thing here. We have three references, A, B, and C before you now where they picked it to pieces, bit by bit, and the case law on it is that you may not do that. Now, in the examination before the Patent Office and Board of Appeals, they forgot or neglected to assert this particular defense, they are trying to inject it in the case at this time, we contend that should not be permitted.

The Court: It doesn't seem to me that this injects anything new.

30 Mr. Hogan: It has not been set forth in their answer as a defense.

The Court: It seems to me that it is just evidence that they are trying to offer in support of their claim.

Mr. Hogan: Our position is that that should have been submitted earlier to the Court in an amended answer and that has not been done, and the rule states if you do not do that, you waive all defenses; Rule 12(h).

The Court: I don't see that this is introducing any new matter in the sense of any new claim.

Mr. Hogan: It is a new defense, it should have been done by amendment to the answer.

The Court: What position do you take, that this is a new defense or simply evidence in support of the position that the Patent Office is taking?

Mr. Nakamura: Merely as evidence to support the position of the Patent Office. The Patent Office position is that the design as shown in Plaintiff's drawing is not patentable over the prior art.

Mr. Hogan: I would like to read the first portion of Rule 12(h):

> "Waiver of Defenses. A party waives all defenses and objections which he does not present either by motion . . . or in his answer"

and then there are two exceptions which have no
31 pertinency here. So our position is that a prior
art reference, just like the patent copies that the Examiner cited and a tool catalog or any other prior art reference, is a defense that should be pleaded in the answer. This has not been done and it would be error to permit it at this time.

The Court: I will overrule the objection. At this time, we are going to take a recess of five minutes.

(A short recess was taken.)

By Mr. Nakamura:

Q. Mr. Wright, the concave ends on your sockets, did you provide them for some reason? A. Oh, partially for appearance and partially for utility. There are sockets with and without those concave ends.

Q. Is there some utilitarian purpose served? A. Yes, there is some utilitarian purpose, they do add slightly to the ease with which it can be put onto a nut; there is some finder action, in other words.

Q. You would agree with the statement made in the Snap-On Tool Catalog on page 25 and I will read that to you, the catalog there states: "All Snap-On Sockets have a chamfered bevel on the wrench opening to aid in guiding the socket onto the nut."

You would agree with that statement, then? A. Well,
I am not in a position to agree with whether all
32 Snap-On Sockets have that bevel or not.

Q. No, but providing that bevel would have that effect? A. It is an aid in helping them.

Q. Yes, thank you. A. Or I should say it is claimed as an aid, I have never made any tests to measure the convenience of it; it is a sales point.

Mr. Nakamura: I have no further questions.

Mr. Hogan: I would like to ask Mr. Wright a few more questions, if I may.

The Court: Very well.

Redirect Examination

By Mr. Hogan:

Q. Have you ever seen a tool catalog that mentioned in the text, in the print, the beauty of a tool? A. No.

Q. In tool design, you strive for eye appeal; do you necessarily characterize that as beauty? A. We are very much concerned about appearance, not only in the design but also in our production, our quality control of production, controlling the brightness of the polish, and so forth, but we do not advertise it as such.

Q. If there is beauty in a tool, it is in the eye of the beholder, is that correct? A. Yes.

33 Mr. Hogan: Since this has been featured as distinctive design or beauty, I would like to introduce another exhibit.

The Clerk: Plaintiff's Exhibit No. 4 marked for identification.

(Memorandum to Mr. Wright from Mr. Bauer, dated April 4, 1961, was marked Plaintiff's Exhibit No. 4 for identification.)

Mr. Nakamura: I object to this, Your Honor.

The Court: What is the ground of the objection?

Mr. Nakamura: This is a statement by a Mr. Bauer, he is not here, we can't question him about it, it is hearsay.

Mr. Hogan: Would you mind reserving your objection until you see how I use it?

The Court: Would you like to do that?

Mr. Nakamura: Yes.

By Mr. Hogan:

Q. You have the memorandum before you. Will you tell us who Mr. Bauer is? A. Mr. Bauer is our sales manager.

Q. Is he the man to whom you would look for advice as to the way in which sales are going, customer acceptance, quantities and so forth? A. Yes, and the man who would bring me information from the field as to what the trade preferred.

34 Q. Does this memorandum report to you the relative sales and the relative prices? A. Yes, it does.

Q. Does it also state that the dealers and mechanics are willing to pay more for the Ten Point Sockets? A. Yes.

Q. Does Mr. Bauer tell you in this memorandum that the distinctive design of the Ten Point Socket is important to your line? A. Yes. Could I amplify that comment further?

Q. Yes. A. In discussions that we have had, he has pointed out the great value to our line of having something that is a little different from what our half dozen major competitors, and many more minor competitors, have to sell.

The Court: How is yours different?

The Witness: Well, possessing the Ten Point Socket is an advantage, it is one which our salesmen have used to interest the buyer in the whole line. Buyers are often fairly well satisfied with their present supplier of sockets, we go in and we show them the Ten Point Socket which is something new, something different, something intriguing to many buyers, something that they do not have from another supplier, and it gets attention, not only for the Ten Point but for the line as a whole.

35 The Court: Why do you give it the name Ten Point, because of the number of points in this portion of it?

The Witness: No, because as you see, it does not have ten points.

The Court: I haven't counted them. What do you attribute this Ten Point to?

The Witness: Well, it is a socket opening. Socket openings are normally designated by the number of points, such as 6 point or 12 point.

Mr. Hogan: Would you point that out on the example the Judge has on the bench?

The Court: This bottom part on page 4 says: "The name 'Ten Point' is derived from the fact that the socket will drive both 6 point and 4 point nuts, making a total of 10."

The Witness: Yes, if somebody asked us why we do that, we would usually give that as an explanation. But it helps characterize the socket, the name itself actually helps to characterize the socket opening as being something different from the standard socket and also it makes people, that are familiar with sockets, ask questions about them because they would think that normally the number of points is related to the number of points of a nut the socket will fit, but nuts are only available with four and six points, so the Ten Point Socket would sound as if it doesn't fit anything, which helps people to pay attention
36 to the name despite the fact that we have a very small advertising budget with which to promote it.

By Mr. Hogan:

Q. Would you say it is a trick name to attract attention to your Ten Point Socket? A. That sums it up very well.

Q. You have before you a conventional hex socket and that would be called what? A. Six point.

Q. And the other one that you have up there on the bench, what is that? A. Twelve point.

Q. Twelve point.

Mr. Hogan: I have no further questions.

Mr. Nakamura: I wonder if I might ask two or three more?

The Court: Certainly.

Recross-Examination

By Mr. Nakamura:

Q. Mr. Wright, looking at these wrench sockets as a matter of design, supposing you have before you, say, the Orey, et al, patent—

The Court: You have the what?

Mr. Nakamura: The Orey, et al, patent, Defendant's Exhibit C.

37 By Mr. Nakamura:

Q. Now, that shows in Figure 3 a certain type of nut in the socket, presumably. If you are interested in turning a hex nut, would you use a 6 point configuration for the wrench? A. A 6 point socket would turn the hex nut.

Q. But if you wanted to use the same nut for turning—you wanted to change the socket to be able to drive a square nut, would you then use a square-sided opening? A. That would be possible.

Q. Would you say then that depending on the type of nut you wished to drive, you would so design the opening in the socket? A. Well, nuts is certainly one thing that I must take into consideration in designing socket wrenches.

Q. But certainly you would have to take into account the number of points on the nut you wished to drive, to determine configuration of the opening in the socket, is that right? A. Yes.

Q. Now, as for the square opening which is shown in your drawing in Figure 2, that is an opening which, I believe, is referred to as a square drive opening? A. Yes.

Q. Is that conventional for fitting the drive mem-
38 ber of a handle which is provided with a squared
off plug? A. Yes, that is the current standard handle and the average user of sockets will have not only a collection of sockets, but will have one or more handles to turn these sockets and each will have this standard male square which will engage with the female square of the socket.

Q. Mr. Wright, could that square outline be just as well a hexagonal one? A. On the end of the socket that connects to the drive or—

Q. To connect to a driver? A. If the driver is made with a hex, this could be a hex but most drivers are made with squares, although there are a few cheap ones that are made with hexes.

Mr. Nakamura: Thank you. Those are all my questions, Your Honor.

Mr. Hogan: I would like to ask one more to correct an impression.

The Court: You may.

Redirect Examination

By Mr. Hogan:

Q. Mr. Nakamura questioned you about driving a nut, the number of points that must be taken into consideration. Can you not also drive a nut by the flat sides of the
nut? A. Yes.
39 Q. Does the span of a wrench depend on the
points or the flats? A. No, it must fit on the flats.

Q. In the Ten Point design, do the flats come into play there as well as the points? A. The flats are the driving surfaces.

Q. So it does not depend upon the number of points? A. No.

Mr. Hogan: Thank you.

The Court: What is the status of this Plaintiff's Exhibit 4 for identification?

Mr. Hogan: We have offered it into evidence.

The Court: You haven't offered it, no.

Mr. Hogan: We will offer all of them in evidence. If Mr. Nakamura wants to take exception to them, I think this is probably the time.

Mr. Nakamura: I believe I will withdraw my objection to that.

The Court: Very well.

Well, if you are through with the witness, he may step down.

Mr. Hogan: Yes. If this timely, we would like to offer all our exhibits in evidence.

The Court: Very well. Let's see, read off those that plaintiff has offered.

40 The Clerk: Patent Office Certified Copy of File Wrapper and Contents, Exhibit 1. Exhibit 2, Montgomery Ward Catalog Page 1071, it is a photostat.

The Court: Yes.

The Clerk: Exhibit 3 is Montgomery Ward purchase Order dated August 15, 1960. And Exhibit 4 is a memorandum to Mr. Wright from Mr. Bauer.

The Court: Well, all of those are admitted.

(Plaintiff's Exhibits Nos. 1 through 4 were received in evidence.)

Mr. Hogan: I know you don't want to have hardware in Court, but do you wish to have those socket wrenches?

The Court: If there is no objection, I would like to keep them.

Mr. Hogan: We will informally or formally offer them.

The Court: Plaintiff's No. 5 will be the socket, shall we say, in question.

Mr. Hogan: Ten Point, it says on the side of it, it is identified as Ten Point.

The Court: And is this the 6 point?

The Witness: You have to see the opening to tell, yes, that is the 6 point.

The Court: This is 12.

The Witness: Let's see the other end, no, that is the 6.

41 The Court: Then, this would be the 12.

The Witness: Let me see the end of the socket.

The Court: You had better look at them and the Clerk will mark them as you say. I would like to have as No. 5 the one that is in issue here.

Mr. Hogan: There are numbers on them. The Ten Point is No. 4FS26.

(Ten Point Socket No. 4FS26 was marked Plaintiff's Exhibit No. 5 for identification.)

Mr. Hogan: And the 6 point is No. 4026.

(6 Point Socket No. 4026 was marked Plaintiff's Exhibit No. 6 for identification.)

Mr. Hogan: And 7 is 4126, 12 point.

(12 Point Socket No. 4126 was marked Plaintiff's Exhibit No. 7 for identification.)

Mr. Hogan: We should offer the Patent Office a set.

The Court: Nos. 5, 6 and 7 are admitted.

(Plaintiff's Exhibits Nos. 5, 6 and 7 were received in evidence.)

The Court: Now, you want yours admitted, too?

Mr. Nakamura: Yes, Your Honor.

The Court: Your No. 1 was what?

Mr. Nakamura: Copies of the references.

The Clerk: And this is 2 and 3 (indicating).

The Court: Defendant's Exhibits Nos. 1, 2 and 3 are admitted.

42 (Defendant's Exhibits Nos. 1, 2 and 3 were received in evidence.)

The Court: Do you want to sum up, each of you?

Mr. Hogan: Are we going to be permitted to file briefs in this?

The Court: You may, if you wish. If you prefer to file a written brief instead of arguing orally, you may. Do you prefer that?

Mr. Nakamura: Either way is all right with me.

Mr. Hogan: What does the Court prefer? This is probably strange material.

The Court: I think it might be better, if it is the same to you, if you have the written brief because that would be more helpful, I believe.

Mr. Hogan: We would like to do whatever is most helpful.

The Court: Would you like that?

Mr. Nakamura: It is certainly agreeable to me.

The Court: How much time did you want to submit it? You may have whatever time you feel that you need.

Mr. Nakamura: Your Honor, would somewhere toward the end of June be all right or is that too long?

The Court: That will be all right if you want it. Do you want that much time?

43 Mr. Hogan: We don't need that much time. This week is tied up with another brief that is due, but I could get it in the following week.

The Court: Well, today is the 8th of May. What time in May would you want?

Mr. Hogan: I hate to lose the benefit of your having heard this testimony this morning. I would like to get it in and decided as quickly as possible. I can get it in by the end of May very easily or even earlier.

The Court: Well, you tell me the time and I will give you that time.

Mr. Hogan: The 21st.

The Court: May 21st.

The Clerk: That is a Sunday.

Mr. Hogan: The 22nd.

The Court: May 22nd. Then how much time after his is in, do you want, Mr. Nakamura?

Mr. Nakamura: May I have two weeks?

The Court: Yes. That would be—

The Clerk: June 5.

The Court: That would be June 5. Do you want any rejoinder to his, or not?

Mr. Hogan: I hope I wont need it but I would like an opportunity if the occasion arises, but it will be prompt, I will not delay.

44 The Court: If you have any, you will put it in within seven days after June 5th. Is that too little time?

Mr. Hogan: No, that is fine.

The Court: Very well.

(The foregoing proceedings were concluded.)

Filed Aug. 24, 1961

Notice of Appeal

Notice is hereby given that Richard B. Wright and The Wright Tool and Forge Company, the plaintiffs above named, hereby appeal to the United States Court of Appeals for the District of Columbia circuit from the final judgment dismissing their Complaint entered on July 1, 1961.

MARTIN E. HOGAN, JR.
Martin E. Hogan, Jr.
Attorney for Appellants
325 Munsey Building
Washington 4, D. C.

Filed Aug. 2, 1961

Motion for Cash Deposit in Lieu of Bond on Appeal

Come now plaintiffs, appellants herein, by their attorney, and move this Court for an order to deposit two hundred fifty dollars ($250.00) cash in lieu of bond for costs in the appeal duly noted herein.

MARTIN E. HOGAN, JR.
Martin E. Hogan, Jr.
325 Munsey Building
Washington 4, D. C.
Attorney for Appellants

Counsel for defendant Commissioner of Patents, David L. Ladd, consents to the granting of this Motion.

C. W. MOORE
C. W. Moore
Attorney for Appellee-Defendant

DAVID L. LADD
Commissioner of Patents

Order for Cash Deposit in Lieu of Bond on Appeal

Upon motion of counsel for plaintiffs, appellants herein, and upon consent to the granting thereof by counsel for defendant, appellee herein, it is, this 25th day of August, 1961.

ORDERED, that the plaintiffs be and hereby are granted leave to deposit with the Clerk of this Court the sum of two hundred fifty dollars ($250.00) in cash in lieu of a bond for costs in the appeal duly noted herein.

JUDGE GEO. L. HART, JR.
United States District Judge

EXHIBITS

Plaintiffs' Exhibit 1

PETITION

To the Commissioner of Patents:

Your petitioner, RICHARD B. WRIGHT, a citizen of the United States and a resident of Akron, State of Ohio, whose post-office address is c/o The Wright Tool and Forge Company, Barberton, Ohio, prays that letters patent may be granted to him for the term of three and one-half years for the new and original design for SOCKET WRENCH, set forth in the following specification.

And he hereby appoints Stevens, Davis, Miller & Mosher (A firm consisting of Richard K. Stevens, Robert F. Davis, Davidson C. Miller, Ellsworth H. Mosher, Martin E. Hogan, Jr. and Roger L. Hansel), Registration No. 14436, whose address is Munsey Building, Washington 4, D. C., his attorneys to prosecute this application and to transact all business in the Patent Office connected therewith.

SPECIFICATION

Be it known that I, RICHARD B. WRIGHT, a resident of Akron, State of Ohio, have invented a new, original, and ornamental design for SOCKET WRENCH, of which the following is a specification, reference being had to the accompanying drawing, forming a part hereof.

Figs. 1 and 2 are end views of the cylindrical socket wrench;

Fig. 3 is a perspective view of the same; and

Fig. 4 is a sectional view showing the internal contour of the hole through the wrench.

I claim:

The ornamental design for a socket wrench as shown.

RICHARD B. WRIGHT
Richard B. Wright

Fig. 1.

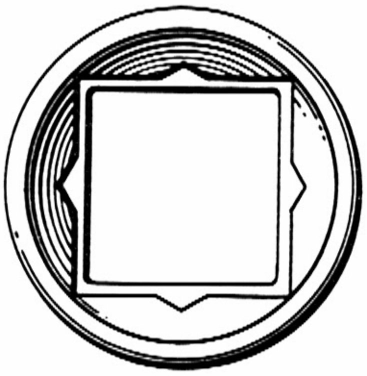


Fig. 2.

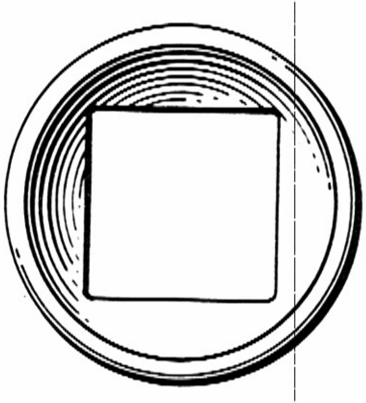


Fig. 3.

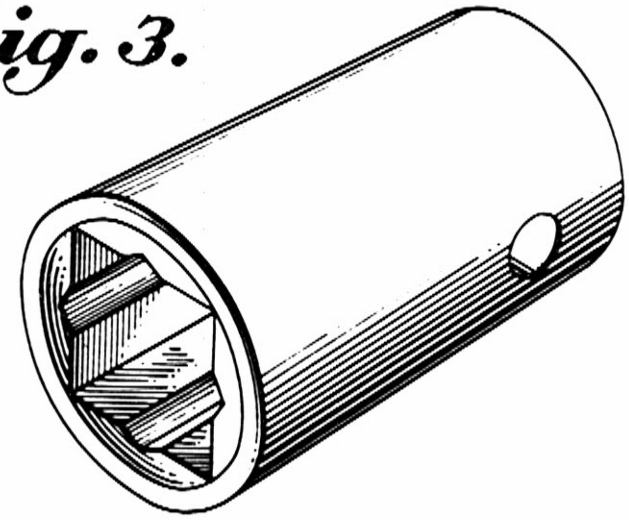
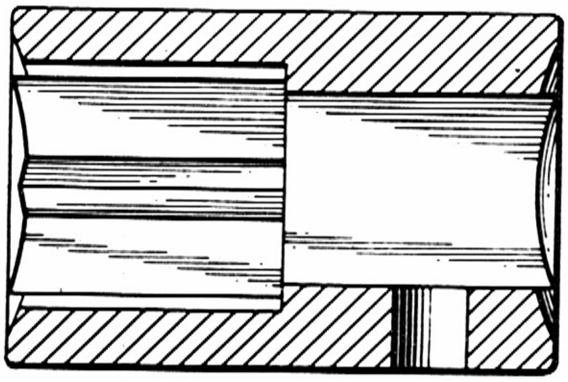


Fig. 4.



INVENTOR
Richard B. Wright

BY Stevens, Davis, Miller & Mosher
ATTORNEYS

OATH

RICHARD B. WRIGHT, the above-named petitioner, being sworn, deposes and says that he is a citizen of the United States and a resident of Akron, State of Ohio, that he verily believes himself to be the original, first and sole inventor of the design for SOCKET WRENCH described and claimed in the foregoing specification; that he does not know and does not believe that the same was ever known or used before his invention thereof, or patented or described in any printed publication in any country before his invention thereof, or more than one year prior to this application, or in public use or on sale in the United States more than one year prior to this application; that said design has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than six months prior to this application; and that no application for patent on said design has been filed by him or his representatives or assigns in any country foreign to the United States.

RICHARD B. WRIGHT
Richard B. Wright

STATE OF OHIO } ss:
COUNTY OF SUMMIT }

Sworn to and subscribed by Richard B. Wright before me this 6th day of September, 1956.

(MISS) GERTRUDE BENN
Notary Public

(SEAL)

My commission expires:
Gertrude Benn, Notary Public
My commission expires Dec. 30, 1956

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

Stevens, Davis & Mosher
Munsey Bldg.
Washington 4, D. C.

Paper No. 2
Applicant: Richard B. Wright
Ser. No. D-42,897
Filed Sept. 10, 1956
For SOCKET WRENCH

References made of record:

Hanes et al	838,109	Dec. 11, 1906	81/61 1
Orey et al	2,549,515	Apr. 17, 1951	81/121.1
Grenat	2,605,665	Aug. 5, 1952	81/121.1

Change descriptions of Figs. 1 and 2 to read:

—Fig. 1 is an elevational view of one end of a socket wrench embodying my new design;

Fig. 2 is an elevational view of the other end thereof;

The cylindrical form of socket wrench is old and well known. One example is shown in Fig. 2 of the Orey et al patent. Both the hex opening and the square opening are also old as disclosed by the Hanes et al patent. The Grenat patent is cumulative.

No invention would be involved in modifying a plain cylindrical wrench as in Orey et al, in view of the Hanes et al teaching, to obtain substantially the design disclosed and claimed in this application.

The claim is rejected as lacking invention.

J. Moncure/mck Examiner, Div. A

AMENDMENT

Paper No. 3

Honorable Commissioner of Patents
Washington 25, D. C.

Dear Sir:

In response to the Official Action of January 28, 1957, please amend the above identified application as follows:

Change the descriptions of Figures 1 and 2 to read:—Figure 1 is an elevational view of one end of a socket wrench embodying my new design;—

—Figure 2 is an external view of the other end thereof:—

REMARKS

Reconsideration of the rejection of the design of this application on the ground of lacking invention is respectfully requested. The references of Orey et al and Hanes et al have been very carefully considered in the light of the applicants' design and the only similarity that is apparent is a functional similarity of a portion of each of the references, but neither of the references show a socket wrench resembling that of applicant's. Examiner states that the cylindrical form of a socket wrench is old and well known, however, Examiner does not cite a reference in support of this statement other than a cylindrical part which is a piece of the functional assembly of the Orey et al wrench and does not constitute a socket wrench such as described and illustrated as applicant's design. The only similarity is that of the external cylindrical contour since the internal contour of applicant's wrench is quite different in appearances and design and would never be confused with the reference. Orey et al's device, as shown in Figure 2 is not truly a socket wrench but is merely a bayonet or slip joint to accommodate the portion handling

1 generally designated as 2 of Figure 1. It is therefore not a socket wrench in the true sense of the word. Hanes et al does not have the cylindrical appearance or external contour of applicant's device and has only a suggestion of the internal contour. It will be clear from Figure 4 of the Hanes et al that the grooves D 4 are relatively shallow with respect to the depth of the socket. There would be no confusion between the design of applicant's socket and that of Hanes et al. The Grenat Patent does not show a socket that would seem to illustrate or teach a socket of applicant's design. It has quite a distinctive arrangement of socket elements and appertures for the removal of nuts but it has no element which per se would suggest or anticipate applicant's design.

A design should be considered as a unit and not analysed bit by bit.

It is submitted that the unit or the design of the unit is sufficiently distinct and identifiable such that the public acceptance can be predicated on this design and that applicant could not be said to pass off on the public a wrench socket similar to any of the references by making available the wrench socket of this design.

For these reasons the reconsideration of this application is requested and the allowance of this design urged.

Respectfully submitted,

Stevens, Davis, Miller & Mosher
Attorneys for Applicant

By
Martin E. Hogan, Jr.

July 29, 1957

U. S. DEPARTMENT OF COMMERCE
PATENT OFFICE
WASHINGTON

Stevens, Davis, Miller and Mosher
Munsey Building
Washington 4, D. C.

Paper No. 4
Applicant: Richard B. Wright
Ser. No. D-42,897
Filed September 10, 1956
For Socket Wrench

Responsive to amendment filed July 29, 1957.

This application has been further considered in the light of the remarks traversing the previous rejection of the claim.

The Orey et al patent shows a cylindrical socket in Fig. 2 thereof. The spline slots or keyways 6 have obviously been shaped to fit the form and size of nut to be turned just as the socket wrench slots of the subject design. Since the Orey et al and Grenat patents show articles having similar internal contour, it is still believed that to substitute the latter form of internal opening, for the slot in the Orey et al socket member, would produce a design strikingly similar to the design disclosed and claimed in this application.

The claim is accordingly again and finally rejected as lacking invention.

A. H. Word:vmg Acting Examiner, Division A

Paper No. 5

Hon. Commissioner of Patents
Washington 25, D. C.

Sir:

Applicant hereby appeals to the Board of Appeals from the decision of the principal examiner, dated December 31, 1957, finally rejecting the claim of the above-identified application.

A check in the amount of $25.00 is attached hereto.

Respectfully submitted,

RICHARD B. WRIGHT

By

STEVENS, DAVIS, MILLER & MOSHER
His Attorneys

By

MARTIN E. HOGAN, JR.

Washington, D. C.
June 27, 1958

Paper No. 6

IN THE UNITED STATES PATENT OFFICE

On Appeal Before the Board of Appeals
No. 17015

Applicant: Richard B. Wright
Ser. No. : D-42,897
Filed : September 10, 1956
For : Design for Socket Wrench
Division : Design Div. A

BRIEF ON APPEAL

This is an appeal from the final rejection of the design of the socket for a socket wrench, finally rejected by the Examiner on December 31, 1957.

The finally rejected claim reads as follows:

> The ornamental design for a socket wrench as shown.

THE INVENTION

The invention relates to the design, that is, the external configuration and contour, of the socket of a socket wrench, which applicant has developed and which has received commercial acceptance.

Applicant is an officer of the Wright Tool and Forge Company of Barberton, Ohio, which has an established line of hand tools, particularly in the field of wrenches, including sockets and handles, as shown by the 1957 Catalog, a copy of which is attached. The Wright Tool and Forge Company is now the largest exclusive manufacturer of sockets and socket wrenches in the United States and is continually developing new tools in this field to meet market requirements. The socket which is the subject matter of this invention was developed and after market analysis, launched commercially, as a new addition to the line, as illustrated by the announcement on pages 4 and 5 of the Catalog and the insert stapled to page 5 of the Catalog, setting forth the design features of this socket which make this tool readily recognizable.

Applicant was the co-inventor of a novel and ornamental wrench socket handle which is the subject matter of design patent No. 182,318, a copy of which is attached. Trademark protection has also been solicited for the trade name "TEN POINT" which is an eye-catching name intended to be associated with this particular design of wrench socket, so that the buying public will associate the design of the wrench socket, the trade name for it, and the wrench handle with the Wright Tool and Forge Company.

THE REJECTION

The claim has been rejected on Orey et al 2,549,515 and Grenat 2,605,665. The Examiner has relied upon Orey et al as the principal reference to anticipate the design of applicant's wrench socket. The Examiner's discussion of the Orey et al patent goes more to the utility aspect of Orey et al since it is a mechanical patent, rather than the design features which applicant seeks to protect by a design patent. The Examiner states that Orey et al shows a cylindrical socket, but here all similarity between applicant's design and that of the mechanical patent to Orey et al ceases. Applicant has a particularly, distinctively, shaped internal cavity, which is square throughout substantially the entire length of the socket. Both ends of the socket are dished or formed with a depressed, curved surface. The square internal formation on one end is further contoured by lightly depressed V grooves. Orey et al shows a cylindrical external surface, and, as stated above, similarity then ceases. It does not have concave or dished ends in either or both ends, nor does it have the square hole extending through the cylinder, nor the additional grooves formed in one end, which make applicant's design quite distinctive in appearance and pleasing to the eye. The Examiner is in error when he states that Orey et al shows an article having a similar internal contour.

The Examiner further relies on Grenat to supply the deficiencies of Orey et al for the internal contour of the hole. Grenat does not show a cylindrical wrench socket, but rather a multi-purpose internal and external wrench handle supporting a plurality of hexagonal protuberances which have the inside contoured with symmetrically arranged grooves in the pattern of identical overlapping squares. The wrench socket interior of Grenat has a symmetrical arrangement of grooves or flutes quite similar to what Wright Tool and Forge Company has been manufacturing as their standard socket for some time, depicted in their Catalog on pages 18 through 22. These pages illustrate wrench sockets with a symmetrical arrangement of uniform flutes or grooves, which are quite unlike the present design of a non-uniform arrangement of deep grooves and shallow grooves, which are quite distinctive and make this wrench socket readily recognizable.

It is submitted that no one, being familiar with applicant's design of wrench socket, could possibly confuse it with that of Orey et al and that the allegation by Examiner that Orey et al and Grenat are similar in appearance or structure is untenable. An analysis of the references will show that the similarity in design does not go beyond the external cylindrical contour of Orey et al, Fig. 2. The distinctive feature of applicant's design is the internal contouring of the cylinder, which is quite different from any of the references cited by the Examiner.

CONCLUSION

It is believed that the rejection of the Examiner of this design is unfounded in fact and law and should be reversed. The Honorable Board of Appeals is requested to find that the claim to this design is allowable.

An oral hearing on this appeal is requested.

Respectfully submitted,

RICHARD B. WRIGHT

By

STEVENS, DAVIS, MILLER & MOSHER
His Attorneys

By

MARTIN E. HOGAN, JR.

Attachments: 2
In triplicate

Washington, D. C.
August 8, 1958

United States Patent Office

Des. 182,318
Patented Mar. 11, 1958

182,318

SOCKET WRENCH

Richard B. Wright, Akron, and Morton Boone, Wadsworth, Ohio, assignors to The Wright Tool and Forge Company, Barberton, Ohio, a corporation of Ohio

Application June 6, 1956, Serial No. 41,791

Term of patent 14 years

(Cl. D54—13)

Fig. 2.

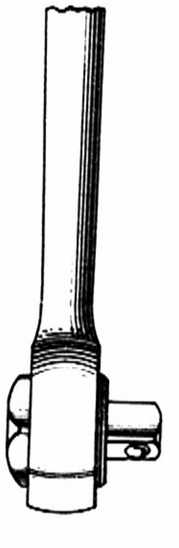


Fig. 3.

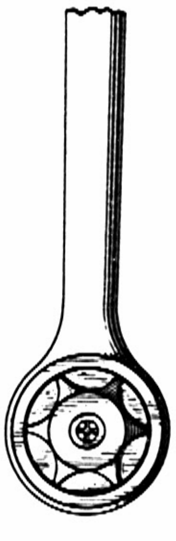


Fig. 1.

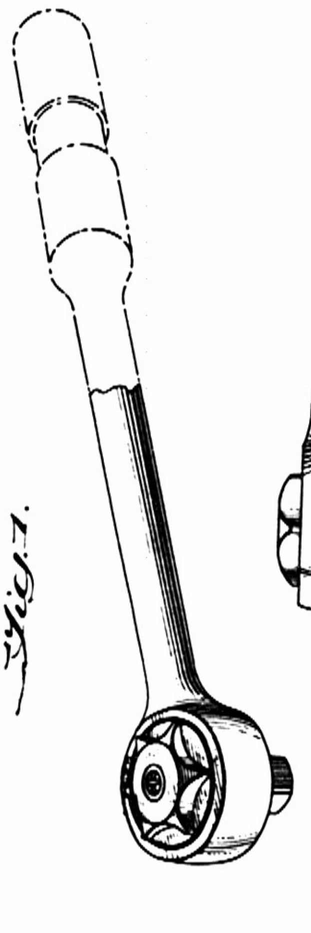


Fig. 1 is a perspective view of a socket wrench, showing our new design;

Fig. 2 is a fragmentary side elevation of the same; and

Fig. 3 is a fragmentary plan view thereof.

The essential features of our design for the wrench disclosed reside in the star-like face having the configuration best shown in Fig. 1. The opposite side is conventional.

We claim:

The ornamental design for a socket wrench, as shown and described.

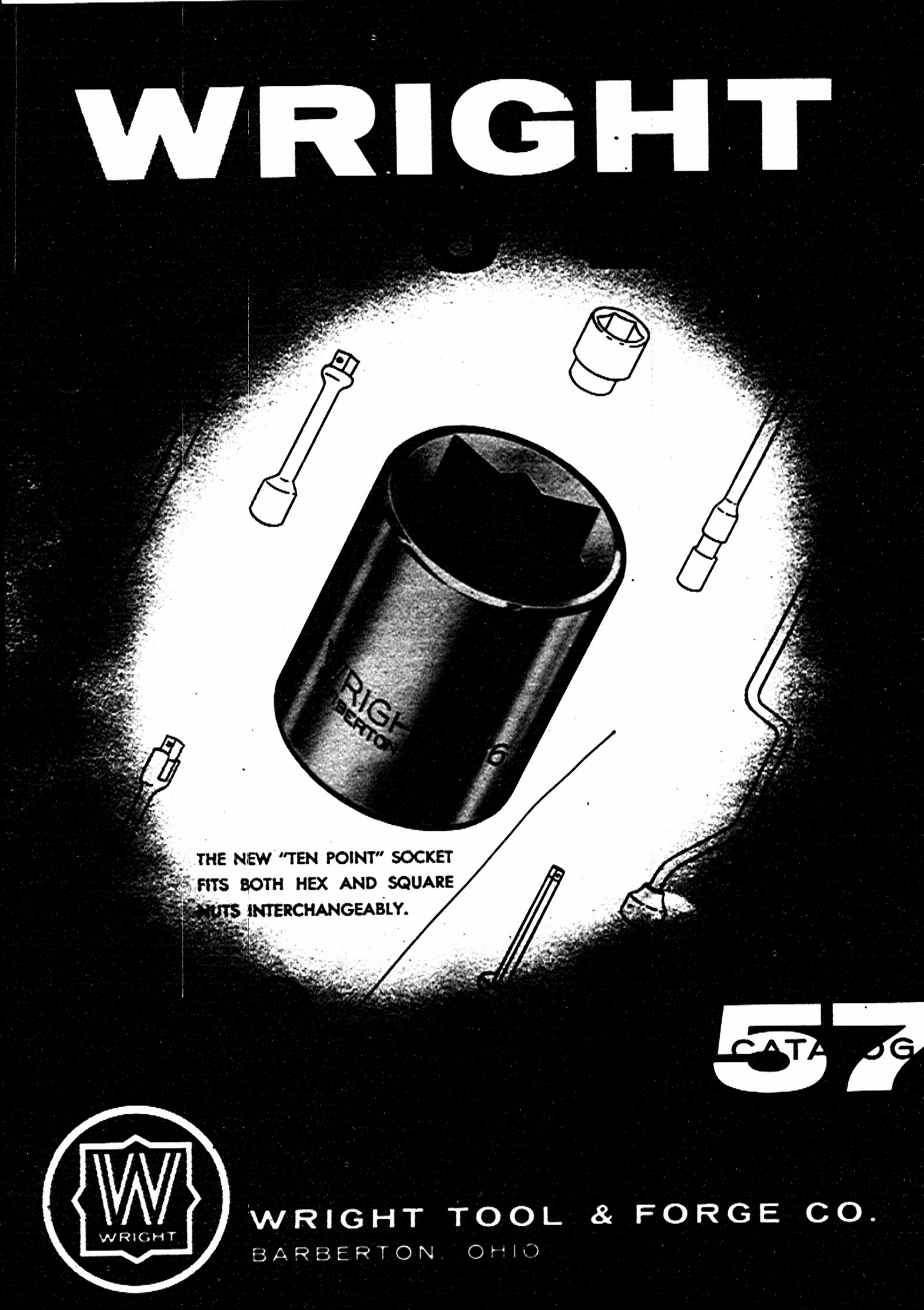
References Cited in the file of this patent

UNITED STATES PATENTS

D. 34,213	Baxter	Mar. 12, 1901
D. 170,571	Fulop	Oct. 13, 1953

OTHER REFERENCES

Blackhawk Mfg. Company, Milwaukee, Wisconsin, Catalog 247 of Wrenches, © 1947, page 24, No. 69,987.



WRIGHT

THE NEW "TEN POINT" SOCKET FITS BOTH HEX AND SQUARE NUTS INTERCHANGEABLY.

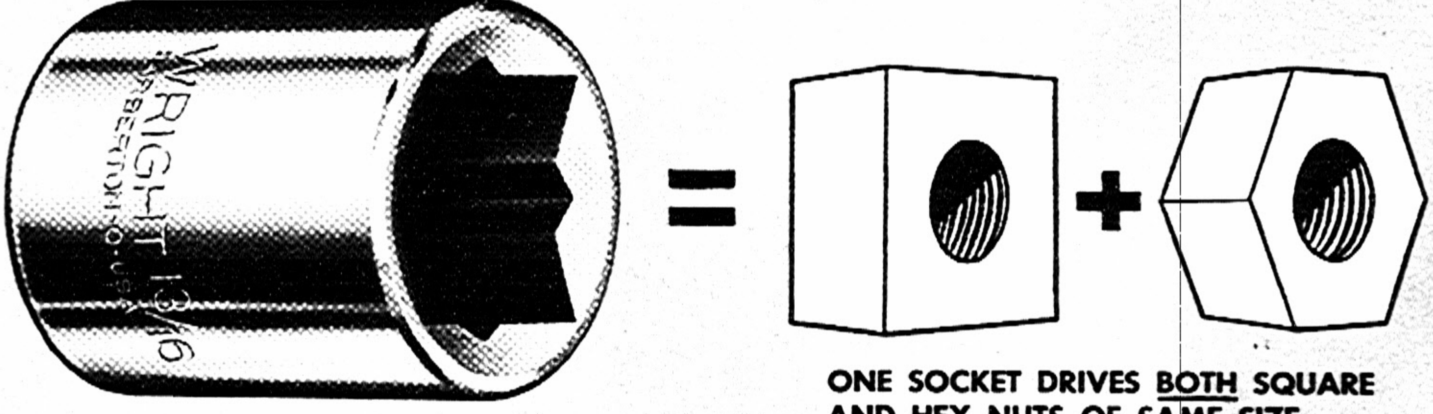
57 CATALOG

WRIGHT TOOL & FORGE CO.
BARBERTON, OHIO

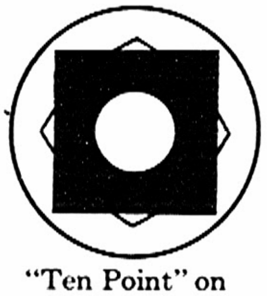
NOTICE

The tools shown on this page meet and exceed all U.S. Government Specifications for hand tools (Federal Specification GGG-W-641 and Military Specification MIL-W-15838).

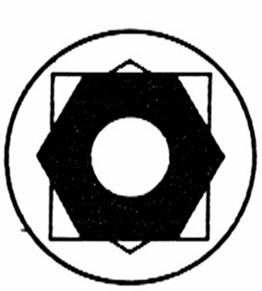
AMAZING NEW SOCKETS FIT SQUARE OR HEX NUTS INTERCHANGEABLY...



ONE SOCKET DRIVES BOTH SQUARE AND HEX NUTS OF SAME SIZE



"Ten Point" on ¾" Square Nut



Same "Ten Point" on ¾" Hex Nut

THE MOST important development in socket manufacturing in fifty years is the new "Ten Point" socket which fits hex or square nuts of the same size interchangeably. This development is an invention of The Wright Tool & Forge Company and patents have been applied for.

The design of this socket is such that it combines great strength with the ability to fit either size nut. No longer is it necessary to change sockets to work on equipment which has both square and hex nuts. No longer is it necessary to purchase two sockets to do the job of tightening square and hex nuts now that the "Ten Point" is available. Tremendous cost savings can be realized with this dual purpose socket, in addition to the time savings made possible by the elimination of socket changes formerly required. The savings in time and cost and the improvement in efficiency by the new socket will pay for its purchase many times over within a short time.

It is certain that the new "Ten Point" socket will eliminate the need for square or 8 Point sockets in the future. This is but another step forward in improved tools manufactured by The Wright Tool & Forge Company. The name "Ten Point" is derived from the fact that the socket will drive both 6 Point and 4 Point nuts, making a total of 10. Buy a set today!

WRIGHT TOOL & FORGE CO.
42 E. STATE ST.
BARBERTON, OHIO

FARM AND HOME TOOL SETS

NEW

FARM AND HOME TOOL SETS

WITH THE EXCLUSIVE NEW WRIGHT DUAL PURPOSE "TEN POINT" SOCKETS

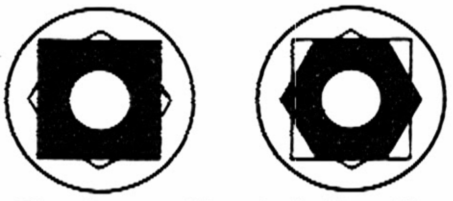
- **WAGONS**
- **HARVESTER**
- **TRACTORS**
- **HARROWS**
- **SPREADERS**
- **RAKES**
- **SPRAYERS**
- **CULTIVATORS**
- **MOWERS**

The exclusive new "Ten Point" dual purpose sockets are featured in all Wright Farm and Home Tool Sets. This new socket will do the work of two sockets, inasmuch as it will fit both square and hex nuts interchangeably.

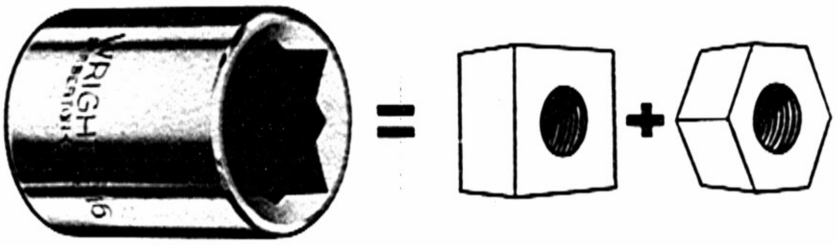
This means that a set of 13 "Ten Point" sockets will do the work of 26 ordinary sockets and through their use a mechanic will find 100% increase in the utility of his tools. With these sets, it is no longer necessary to purchase special sockets for square nuts and other sockets for hex nuts. One "Ten Point" will perform both jobs without further cost.

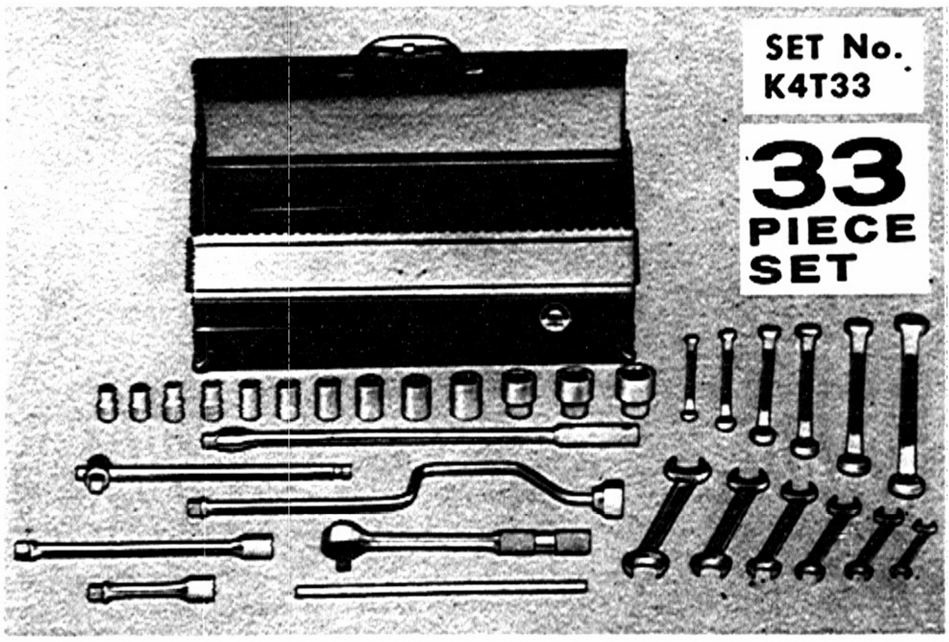
Nowhere exists a finer bargain than the Wright Farm and Home Tool Sets with the exclusive new "Ten Point" socket and nowhere else may these sockets be purchased. Only Wright makes the dual purpose "Ten Point" socket.

- **LAWN MOWERS**
- **WASHING MACHINES**
- **PUMPS**
- **PLUMBING**
- **CONSTRUCTION**
- **HOME WORKSHOPS**
- **TRAILERS**

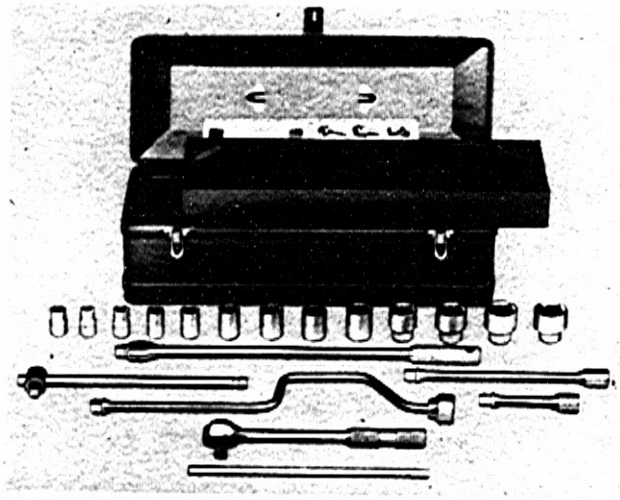


Fits Square Nut And Hex Nut





The most complete set offered for farm and home use. It contains 13 different sizes of "Ten Point" dual purpose sockets, ranging from ⅜-inch to 1⅛-inch in size. These 13 sockets are the equivalent of 26 ordinary sockets. A full complement of handles includes a reversible ratchet, speed handle, sliding T handle, 5-inch extension, 10-inch extension, flex handle and flex handle bar. Six end wrenches are included ranging from ⅜-inch through 1-inch capacity. Six box wrenches are included also, covering a range from ⅜-inch through 1-inch capacity. Packed in a large steel box with tote tray.



21 PIECE SET

SET No.
K4T21

MASTER SOCKET SET

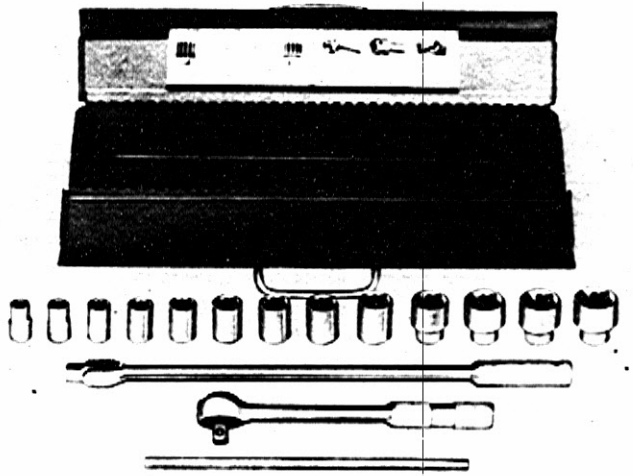
This set contains a full complement of Ten Point Sockets. The total of 13 of these sockets is equivalent to 26 ordinary sockets in any other set. This large group of sockets is combined with a sliding T handle, 5-inch extension, 10-inch extension, a speed handle, a flex handle, flex handle bar and a reversible ratchet all in ½-inch drive. Packed in steel box with tote tray. Sockets range from ⅜″ to 1⅛″ openings. Rubber grips on handles optional at no extra cost.

17 PIECE SET

SET No.
K4T17

GENERAL UTILITY

This set contains a full complement of ½-inch drive, Ten Point sockets of which there are 13 sizes. As in the other sets, this constitutes the equivalent of 26 sockets in any other type of tool set with ordinary sockets. In addition to the Ten Point sockets, there is an 18-inch flex handle, flex handle bar and a reversible ratchet, all contained in a split top, spill-proof steel box. Sockets range from ⅜″ to 1⅛″ openings. Rubber grips on handles optional at no extra cost.

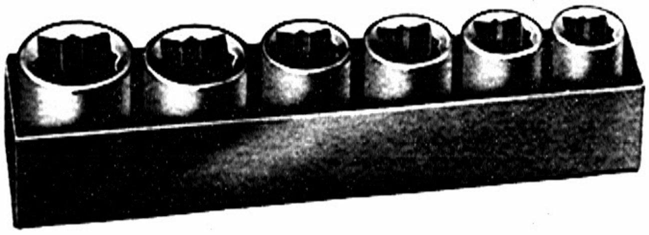


13 PIECE SET

SET No.
K4T13

ALL PURPOSE

This set contains 11 sizes of dual purpose Ten Point sockets ranging from ⅜-inch up to 1-inch. The 11 sockets in this group are the equivalent of 22 sockets in any ordinary set. In addition, a flex handle is included in the set, all of which is packed in a strong, sturdy steel box which is easy to carry or to store. Wonderful starter set for all purpose use! Rubber grips on handles optional at no extra cost.



SET No.
K4T06

6 PIECE SET

For the individual who requires a limited use of sockets yet will need the great utility of the Ten Point sockets, a set of 6 sockets only has been designed. This set contains the 6 most popular sizes of dual purpose sockets and is the equivalent of 12 sockets of any other type. These are not packed in a steel box. Sockets range from ½″ to 13/16″ openings.

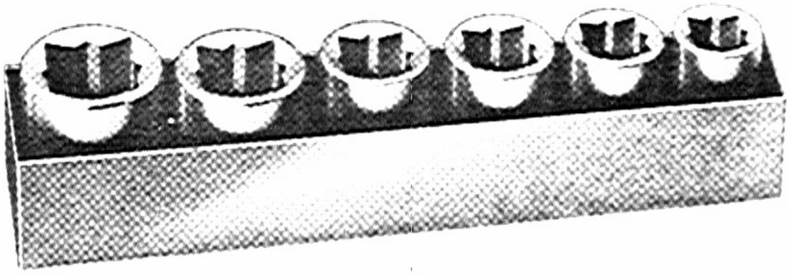
NOTICE

The tools shown on this page meet and exceed all U.S. Government Specifications for hand tools (Federal Specification GGG-W-641 and Military Specification MIL-W-15838).

WRIGHT

10 POINT SETS

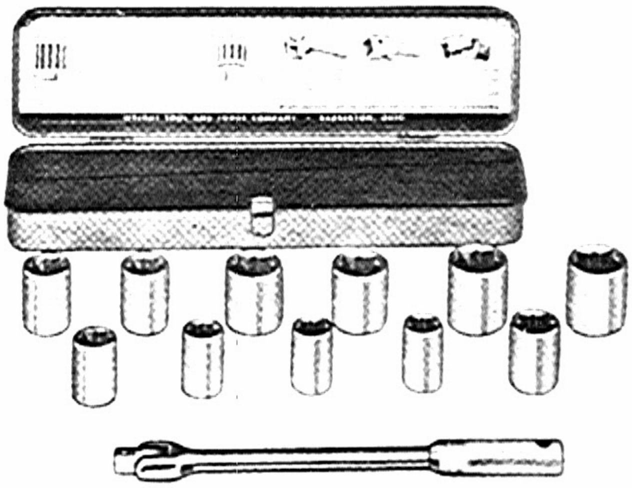
TEN POINT SOCKET SETS



NO.	DESCRIPTION
4FS16	½" Ten Point Socket
4FS18	9/16" Ten Point Socket
4FS20	⅝" Ten Point Socket
4FS22	11/16" Ten Point Socket
4FS24	¾" Ten Point Socket
4FS26	13/16" Ten Point Socket

No. K4T06 Set **6 Pieces**

A set of six "ten point" sockets of the most popular sizes for the man who has a limited need for sockets. These six "ten point" sockets are the equivalent of six hex sockets and six eight point sockets, thus six will do the work of twelve. A wonderful addition to any existing tool set for the mechanic.



A complete set of "ten point" sockets together with a ½" drive ratchet wrench for use wherever square and hex nuts are encountered. Covers practically all sizes of hex and square nuts used on ordinary machinery, automobiles and farm equipment. Eleven "ten point" sockets do the work of twenty-two ordinary sockets. An immense cost saver as well as time saver for the mechanic who needs the best in practical tools.

NO.	DESCRIPTION
4FS12	⅜" Ten Point Socket
4FS14	7/16" Ten Point Socket
4FS16	½" Ten Point Socket
4FS18	9/16" Ten Point Socket
4FS20	⅝" Ten Point Socket
4FS22	11/16" Ten Point Socket
4FS24	¾" Ten Point Socket
4FS26	13/16" Ten Point Socket
4FS28	⅞" Ten Point Socket
4FS30	15/16" Ten Point Socket
4FS32	1" Ten Point Socket
N-17	½" Drive Flex Handle
92	Box

No. K4T13 Set **13 Pieces**

INDIVIDUAL SOCKETS

Ten point sockets are available in the most popular sizes. These sizes cover practically all of the applications required on today's farm machinery, industrial machinery, automobiles, aircraft, and other equipment. Additional sizes will be available on a continuing basis. Each socket will fit both square and hex nuts of the size stamped on the socket. These two-in-one sockets will save vast amounts of tool expense and labor. All are hot-forged from the finest alloy steel and are heavily chrome-plated and polished to a bright lustre.

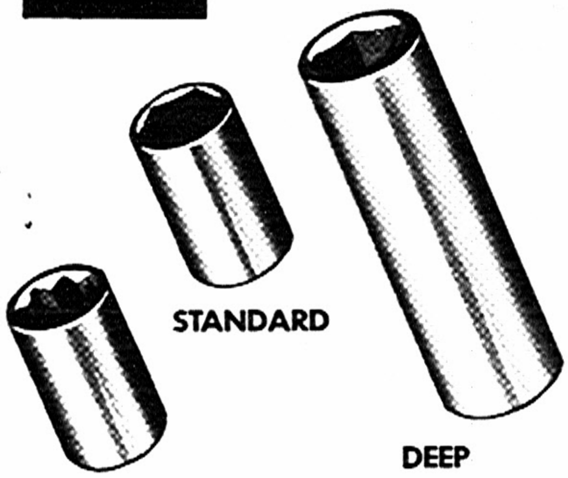
Note: Sockets shown in set No. K4T13 are sizes currently available. New sizes are being added. Write for details.

¼" SQUARE DRIVE
SOCKETS & HANDLES

NOTICE

The tools shown on this page meet and exceed all U.S. Government Specifications for hand tools (Federal Specification GGG-W-641 and Military Specification MIL-W-15838).

¼" SQUARE DRIVE SOCKETS



¼" SQUARE DRIVE SOCKETS AND HANDLES

All Wright ¼" drive sockets, handles, and accessories are of hot-forged alloy steel and are finished to standards equal to those of larger sizes. Full range of sockets from 3/16" to ½" in standard 6 point, 6 point deep sockets, and three sizes of standard 8 point for extra fine work in automotive and electrical appliances. Wright ¼" drive tools are unexcelled in strength and workmanship.

The spin handle is designed to drive ¼" sockets in hard-to-reach places with maximum speed.

6 POINT DEEP SOCKETS

NO.	DESCRIPTION	NO.	DESCRIPTION
DV-608	¼" Opening	DV-612	⅜" Opening
DV-609	9/32" Opening	DV-614	7/16" Opening
DV-610	5/16" Opening	DV-616	½" Opening
DV-611	11/32" Opening		

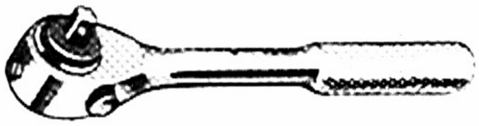
6 POINT STANDARD SOCKETS

NO.	DESCRIPTION	NO.	DESCRIPTION
V-606	3/16" Opening	V-611	11/32" Opening
V-607	7/32" Opening	V-612	⅜" Opening
V-608	¼" Opening	V-614	7/16" Opening
V-609	9/32" Opening	V-616	½" Opening
V-610	5/16" Opening		

8 POINT STANDARD SOCKETS

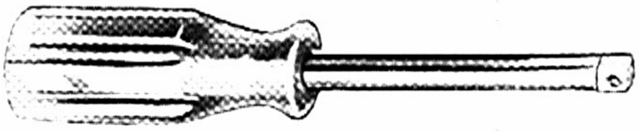
NO.	DESCRIPTION	NO.	DESCRIPTION
V-808	¼" Opening	V-812	⅜" Opening
V-810	5/16" Opening		

¼" SQUARE DRIVE HANDLES



REVERSIBLE RATCHET

NO. V-70 5½" LONG

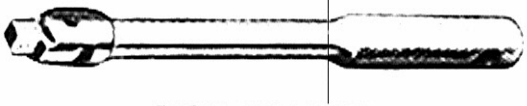


SPIN HANDLE

V-25 5½" LONG

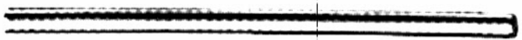
SLIDE "T" HANDLE

NO. V-11 6" LONG



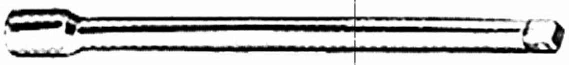
FLEX HANDLE

NO. V-17 5½" LONG



FLEX HANDLE BAR

NO. V-21 5" LONG



EXTENSION

NO. V-4 4" LONG
NO. V-12 6" LONG

NOTICE
The tools shown on this page meet and exceed all U.S. Government Specifications for hand tools (Federal Specification GGG-W-641 and Military Specification MIL-W-15838).

WRIGHT

3/8" SQUARE DRIVE

SOCKETS & HANDLES

3/8" SQUARE DRIVE SOCKETS AND HANDLES

Wright 3/8" drive sockets and handles are hot-forged from alloy steel. Sockets range from 6 point standard to 12 point standard and 12 point deep with a variety of flexible universal sockets. All sockets and handles are designed for long life and good service with particular utility on automotive, aircraft, electrical, and industrial applications. In 3/8" drive Wright Tools are indispensible.

6 POINT STANDARD SOCKETS

NO.	DESCRIPTION	NO.	DESCRIPTION
MS-8	1/4" Opening	MS-18	9/16" Opening
MS-10	5/16" Opening	MS-20	5/8" Opening
MS-12	3/8" Opening	MS-22	11/16" Opening
MS-14	7/16" Opening	MS-24	3/4" Opening
MS-16	1/2" Opening		

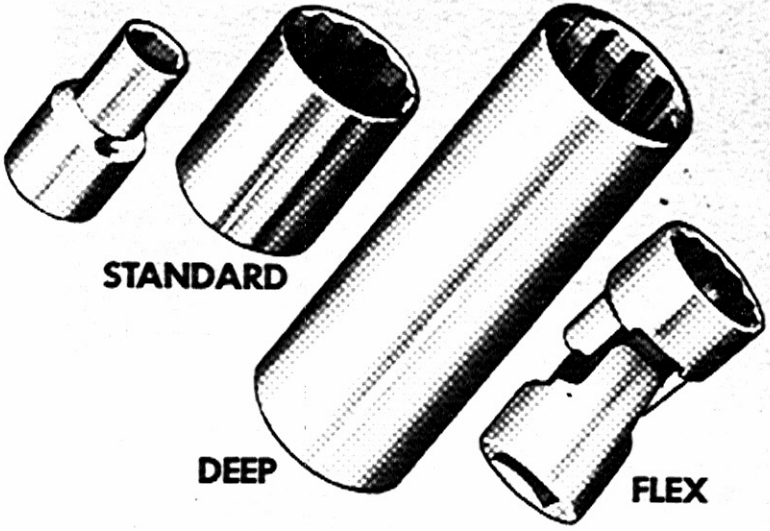
12 POINT STANDARD SOCKETS

MS-50	3/8" Opening	MS-56	11/16" Opening
MS-51	7/16" Opening	MS-57	3/4" Opening
MS-52	1/2" Opening	MS-59	13/16" Opening
MS-53	9/16" Opening	MS-60	7/8" Opening
MS-55	5/8" Opening		

12 POINT DEEP SOCKETS

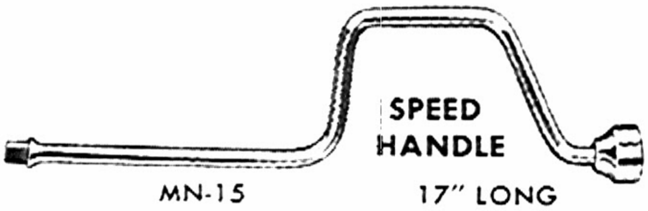
MD-50	3/8" Opening	MD-56	11/16" Opening
MD-51	7/16" Opening	MD-57	3/4" Opening
MD-52	1/2" Opening	MD-59	13/16" Opening
MD-53	9/16" Opening	MD-60	7/8" Opening
MD-55	5/8" Opening		

3/8" SQUARE DRIVE SOCKETS



12 POINT FLEX SOCKETS

NO.	DESCRIPTION	NO.	DESCRIPTION
MU-50	3/8" Opening	MU-55	5/8" Opening
MU-51	7/16" Opening	MU-56	11/16" Opening
MU-52	1/2" Opening	MU-57	3/4" Opening
MU-53	9/16" Opening		



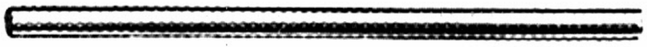
SPEED HANDLE
MN-15 17" LONG

3/8" SQUARE DRIVE HANDLES

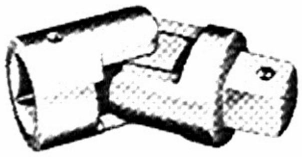
SLIDING "T" HANDLE
MN-11 8" LONG

FLEX HANDLE
MN-17 8½" LONG

REVERSIBLE RATCHET
MN-70 8" LONG



FLEX HANDLE BAR
MN-21 6½" LONG



UNIVERSAL JOINT
MU-11

EXTENSIONS

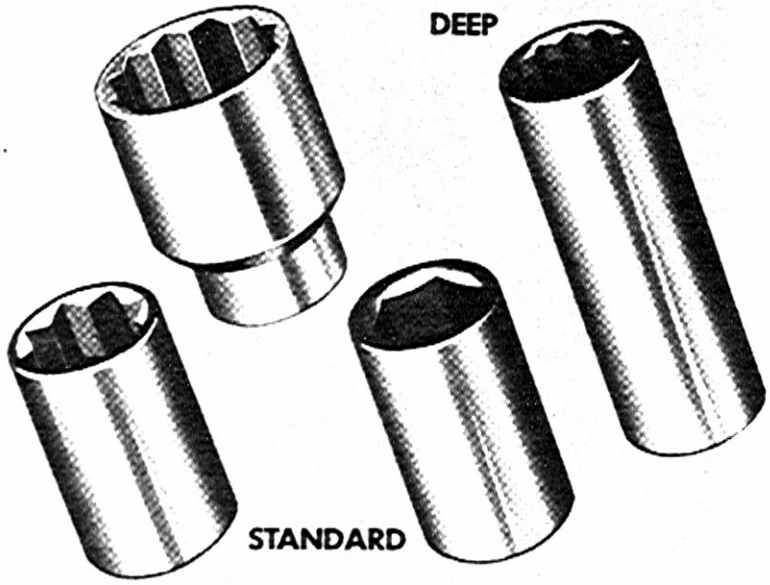
MN-22	3" LONG	MN-12A	8" LONG
MN-12	5" LONG	MN-13	12" LONG

1/2" SQUARE DRIVE

SOCKETS & HANDLES

NOTICE
The tools shown on this page meet and exceed all U.S. Government Specifications for hand tools (Federal Specification GGG-W-641 and Military Specification MIL-W-15838).

1/2" SQUARE DRIVE SOCKETS



8 POINT STANDARD SOCKETS

NO.	DESCRIPTION	NO.	DESCRIPTION
S-180	⅜" Opening	S-187	¾" Opening
S-181	7/16" Opening	S-189	13/16" Opening
S-182	½" Opening	S-190	⅞" Opening
S-183	9/16" Opening	S-192	1" Opening
S-185	⅝" Opening		

½" DRIVE SOCKETS AND HANDLES

The most popular drive size in the entire Wright line is the ½" square drive. Exceptional range of sockets from ⅜" to 1¼" makes this the most versatile size made. Socket types range through 12 point standard, 12 point deep, 6 point standard, and 8 point standard plus a complete variety of handles for maximum utilization. Made of hot-forged alloy steel to exceed all government specifications for strength. In price and quality there is no finer buy on the market today than Wright ½" drive tools.

6 POINT STANDARD SOCKETS

NO.	DESCRIPTION	NO.	DESCRIPTION
S-101	7/16" Opening	S-105	⅝" Opening
S-102	½" Opening	S-106	11/16" Opening
S-103	9/16" Opening	S-107	¾" Opening

12 POINT STANDARD SOCKETS

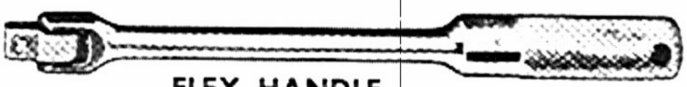
S-150	⅜" Opening	S-158	25/32" Opening
S-151	7/16" Opening	S-159	13/16" Opening
S-152	½" Opening	S-160	⅞" Opening
S-153	9/16" Opening	S-161	15/16" Opening
S-154	19/32" Opening	S-163	1" Opening
S-155	⅝" Opening	S-164	1 1/16" Opening
S-155A	21/32" Opening	S-166	1 ⅛" Opening
S-156	11/16" Opening	S-168	1 3/16" Opening
S-157	¾" Opening	S-170	1 ¼" Opening

12 POINT DEEP SOCKETS

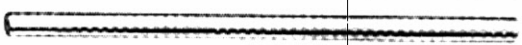
DS-152	½" Opening	DS-160	⅞" Opening
DS-153	9/16" Opening	DS-161	15/16" Opening
DS-155	⅝" Opening	DS-163	1" Opening
DS-156	11/16" Opening	DS-164	1 1/16" Opening
DS-157	¾" Opening	DS-165	1 ⅛" Opening
DS-159	13/16" Opening		

1/2" SQUARE DRIVE HANDLES

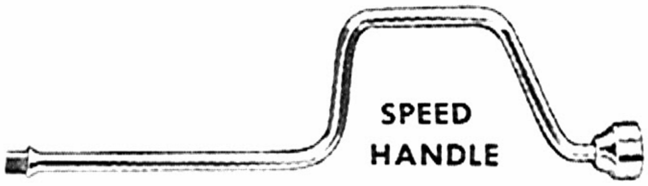
SLIDING "T" HANDLE
N-11 11" LONG



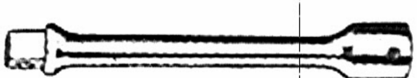
FLEX HANDLE
N-17 12" LONG N-18 18" LONG



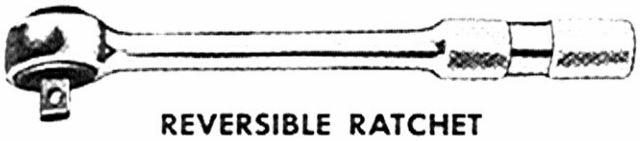
FLEX HANDLE BAR
N-21 11" LONG



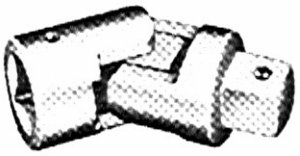
SPEED HANDLE
N-16 18" LONG



EXTENSIONS
N-19 2" N-14 18"
N-12 5" N-13 10"



REVERSIBLE RATCHET
N-70 12" LONG



UNIVERSAL JOINT
U-11

NOTICE

The tools shown on this page meet and exceed all U.S. Government Specifications for hand tools (Federal Specification GGG-W-641 and Military Specification MIL-W-15838).

WRIGHT

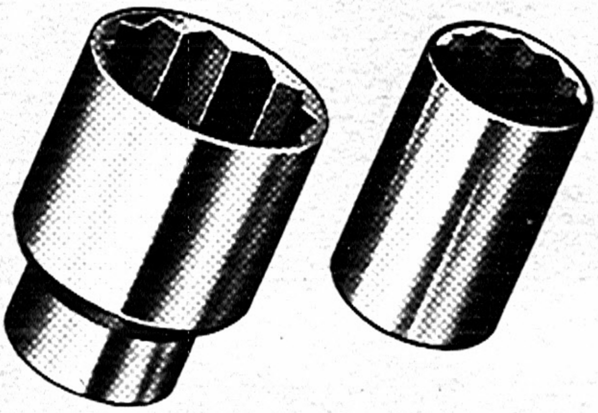
3/4"
SQUARE DRIVE

SOCKETS & HANDLES

¾" SQUARE DRIVE SOCKETS AND HANDLES

The Wright heavy duty ¾" drive finds maximum utility in industrial and transportation fields. All Wright ¾" drive sockets and handles are hot-forged for maximum strength and long life. The extra long range of sockets assures maximum utility. Sockets range from ⅞" through 2⅜" for every purpose requiring heavy duty tools. Wright ¾" drive tools exceed all government specifications for strength.

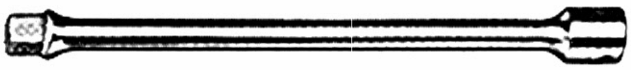
3/4" SQUARE DRIVE SOCKETS



STANDARD

12 POINT STANDARD SOCKETS

NO.	DESCRIPTION	NO.	DESCRIPTION
S-328	⅞" Opening	S-350	1 9/16" Opening
S-330	15/16" Opening	S-352	1⅝" Opening
S-332	1" Opening	S-354	1 11/16" Opening
S-334	1 1/16" Opening	S-356	1¾" Opening
S-336	1⅛" Opening	S-358	1 13/16" Opening
S-338	1 3/16" Opening	S-360	1⅞" Opening
S-340	1¼" Opening	S-364	2" Opening
S-342	1 5/16" Opening	S-368	2⅛" Opening
S-344	1⅜" Opening	S-370	2 3/16" Opening
S-346	1 7/16" Opening	S-372	2¼" Opening
S-348	1½" Opening	S-376	2⅜" Opening



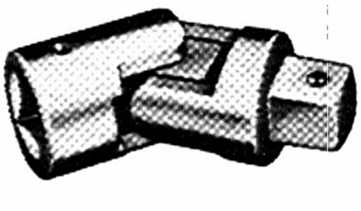
EXTENSIONS

N-314	3½" LONG
N-312	8" LONG
N-313	16" LONG

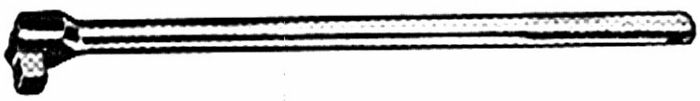
3/4" SQUARE DRIVE HANDLES

SLIDING "T" HANDLE
N-311 17" LONG

REVERSIBLE RATCHET
N-370 21" LONG



UNIVERSAL JOINT
U-311



FLEX HANDLE
N-318 21" LONG

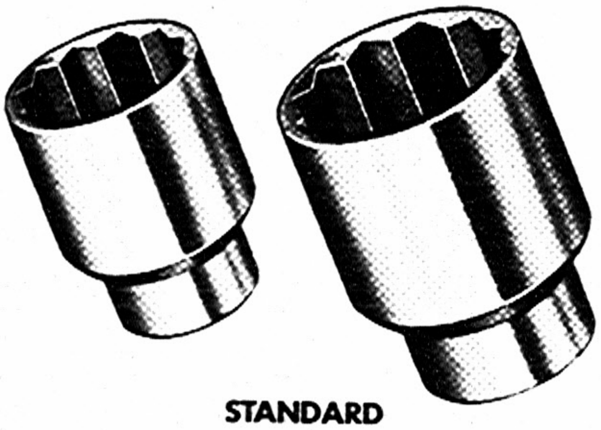
1″
SQUARE DRIVE

SOCKETS & HANDLES

NOTICE

The tools shown on this page meet and exceed all U. S. Government Specifications for hand tools (Federal Specification GGG-W-641 and Military Specification MIL-W-15838).

1″ SOCKETS
SQUARE DRIVE


STANDARD

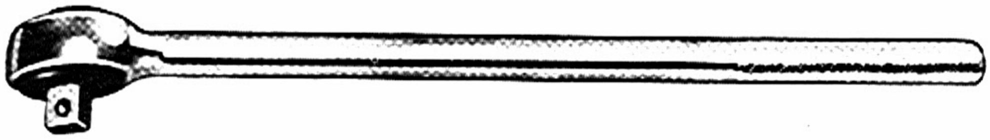
1″ SQUARE DRIVE SOCKETS AND HANDLES

Extra heavy duty tools for extra life and strength. Wright 1″ drive sockets and handles are fully hot-forged for the ultimate strength in this drive size. Sockets range from 1 7/16″ to 3⅛″ for complete coverage of all nuts in the extra heavy duty range. No tools presently made in this drive size exceed Wright tools for strength or durability. All 1″ drive tools exceed government specifications for strength.

12 POINT STANDARD SOCKETS

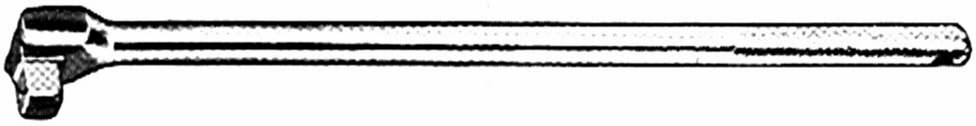
NO.	DESCRIPTION	NO.	DESCRIPTION
8ST46	1 7/16″ Opening	8ST74	2 5/16″ Opening
8ST48	1½″ Opening	8ST76	2⅜″ Opening
8ST52	1⅝″ Opening	8ST78	2 7/16″ Opening
8ST54	1 11/16″ Opening	8ST80	2½″ Opening
8ST56	1¾″ Opening	8ST82	2 9/16″ Opening
8ST58	1 13/16″ Opening	8ST84	2⅝″ Opening
8ST60	1⅞″ Opening	8ST88	2¾″ Opening
8ST62	1 15/16″ Opening	8ST90	2 13/16″ Opening
8ST64	2″ Opening	8ST94	2 15/16″ Opening
8ST68	2⅛″ Opening	8ST96	3″ Opening
8ST70	2 3/16″ Opening	8ST100	3⅛″ Opening
8ST72	2¼″ Opening		

1″ HANDLES
SQUARE DRIVE



REVERSIBLE RATCHET

8HR21 21″ LONG

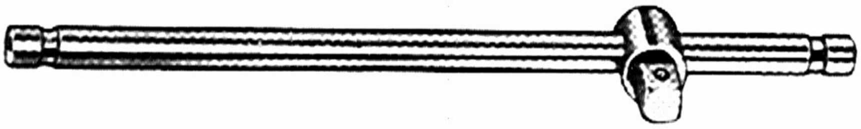


FLEX HANDLE

8HF26 26″ LONG

EXTENSIONS

8SX08	8″ LONG
8SX17	17″ LONG



SLIDING "T" HANDLE

8HT23 23″ LONG

Paper No. 7

U. S. DEPARTMENT OF COMMERCE
PATENT OFFICE
WASHINGTON

Appeal No. 170-15

Before the Board of Appeals

IN RE APPLICATION OF
RICHARD B. WRIGHT

Ser. No. D-42,897
Filed September 10, 1956
For SOCKET WRENCH

Stevens, Davis, Miller and Mosher

EXAMINER'S ANSWER

This is an appeal from the final rejection of the following claim:

> The ornamental design for a socket wrench as shown.

The references relied upon are:

Hanes et al	838,109	Dec. 11, 1906
Orey et al	2,549,515	Apr. 17, 1951
Grenat	2,605,665	Aug. 5, 1952

The herein disclosed and claimed socket wrench is of a conventional plain cylindrical external shape and is generally square hollow-bodied in internal configuration. There being disposed on each of the four square sides of the internal surface V-shaped grooves which extends about one-half the length of the socket.

The claim stands rejected for lack of design invention over the references.

The Orey et al patent shows a socket having a conventional plain cylindrical external shape and a grooved internal portion which extends about one-half the length of the socket. The Grenat and Hanes et al patents show wrench members which are generally square hollow-bodied in internal configuration and have on each of the four square internal sides thereof V-shaped grooves as is here shown.

It is the position of the examiner that to substitute a form of internal opening as in Grenat or Hanes et al, for the opening of Orey et al, would produce a design strikingly similar to the design disclosed and claimed in this application. Said modification is deemed well within the competency of the routine designer and not invention.

In view of the foregoing, the final rejection of the claim is deemed to be proper and in order.

Respectfully submitted,

Examiner, Division A

AHWord:vmg
Attys:

Stevens, Davis, Miller
and Mosher
Munsey Bldg.
Washington 4, D. C.

Paper No. 10

Appeal No. 170-15
Hearing:
November 9, 1959

MRW

IN THE UNITED STATES PATENT OFFICE

Before the Board of Appeals

Ex parte RICHARD B. WRIGHT

Application for Patent filed September 10, 1956,
Serial No. D-42,897. Socket Wrench.

Stevens, Davis, Miller & Mosher for appellant

Before Bailey and Keely, Examiners-in-Chief, and Manian, Acting Examiner-in-Chief.

Manian, Acting Examiner-in-Chief.

This is an appeal from the final rejection of the following design claim:

> "The ornamental design for a socket wrench as shown."

The references relied upon are:

Hanes et al	838,109	Dec. 11, 1906
Orey et al	2,549,515	Apr. 17, 1951
Grenat	2,605,665	Aug. 5, 1952

This application relates to a design for a socket wrench having a cylindrical external shape, and a generally square hollow internal configuration, there being formed on each of the four sides of the internal surface, centrally thereof, a V-shape groove which extends about one-half the length of the socket, and the ends of the wrench being dished.

The Orey et al. patent shows, in Figures 2 and 3, a socket wrench having a cylindrical external shape and internal keyways 6 which extend about one-half the length of the socket, the remaining half of the socket being constructed to serve as a nut receiving chamber.

Hanes et al. show a socket wrench D having a generally square hollow internal configuration D′, with V-shaped grooves D^4 formed on the central portions of the sides thereof which extend about one-half the length of the socket.

Grenat shows a socket wrench having an internal serrated socket 6 comprising a hollow square with V-notches formed centrally of the sides thereof.

The claim stands rejected as unpatentable over Orey et al. in view of Grenat and Hanes et al. The examiner has taken the position that:

> "* * * to substitute a form of internal opening as in Grenat or Hanes et al, for the opening of Orey et al, would produce a design strikingly similar to the design disclosed and claimed in this application. Said modification is deemed well within the competency of the routine designer and not invention."

The appellant contends that the Orey et al. and Grenat patents do not disclose the specific internal construction of appellant's wrench and that none of the references, including the patent to Hanes et al. which was relied upon by the Examiner in his Answer and was referred to at the hearing, show the dished ends. Appellant contends that these features make his design distinctive in appearance and pleasing to the eye.

We have carefully considered the contentions and arguments presented in appellant's brief but find no reversible error in the examiner's rejection of the appealed claim as being unpatentable over the references. The general overall appearance of the cylindrical socket wrench 4, as depicted in Figures 2 and 3 in Orey et al., is, in our opinion, strikingly similar to that illustrated in appellant's drawings. The interior construction of appellant's wrench is quite similar to that shown in Hanes et al. and in Grenat. We agree with the examiner that modification of the Orey et al. wrench, in the light of Hanes et al. and Grenat, is well within the competency of the routine designer.

Regarding the interior construction of appellant's wrench, it appears to us that such construction is due entirely to functional requirements, and we do not think that appellant's design has produced a substantially different aesthetic effect from the designs of the references.

The feature of the dished ends of the socket wrench is so slight as to be negligible and, in our opinion, does not significantly affect the overall appearance of appellant's design.

For the reasons stated above, we will sustain the rejection.

The decision of the Primary Examiner is affirmed.

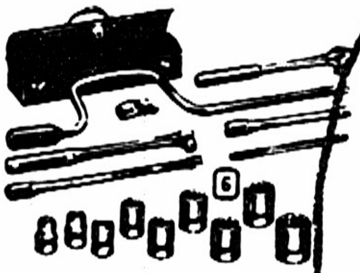
STEVENS, DAVIS, MILLER & MOSHER
Munsey Bldg.
Washington 4, D. C.

Plaintiffs' Exhibit 2

3/8-in. Drive Socket Set

(6) POWR-KRAFT 17-Pc. Set includes seven 12-pt. sockets: 1/2, 9/16, 5/8, 11/16, 3/4, 13/16, 7/8 in.; 3/8, 7/16 inch 6-pt. sockets; 7-in. reversible ratchet; 17-in. speeder handle; flex handle, crossbar; universal joint; 3, 10-in. extensions. With sturdy metal carrying case for convenient storage. All parts are fully guaranteed, see opposite page for details.

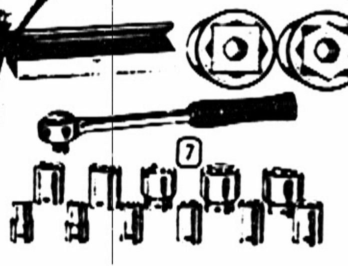
84 A 4840—Wt. 5 lbs. 6 oz......$18.47

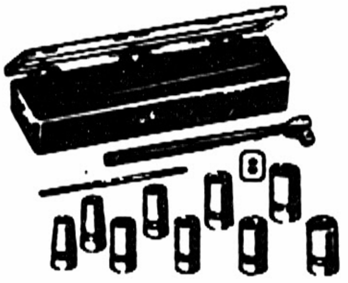


Dual-Purpose Socket Set

(7) POWR-KRAFT 13-Pc. 1/2-in. Drive Set. 2-in-1 sockets fit square and hex nuts of same size. The best in practical tools . . . no longer necessary to buy separate sockets for square or hex nuts. Includes: 10¼-in. reversible ratchet, eleven 10-pt. sockets: 3/8, 7/16, 1/2, 9/16, 5/8, 11/16, 3/4, 13/16, 7/8, 15/16, 1 in. and 13¼x3¼x2 in. metal carrying case.

84 A 4801—Wt. 7 lbs. Mail...$15.9

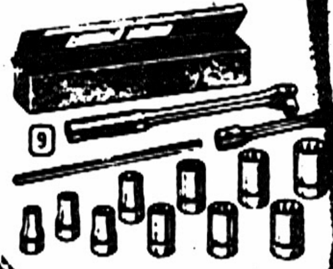




1/4-in. Drive Socket Set

(8) Economical 12-Pc. Set is perfect for small jobs. For homeowners, hobbyists, etc. For small, close quarter work. Chrome-plated alloy steel. Includes: Flex-head handle and crossbar; Six 6-pt. sockets: 1/4, 9/32, 5/16, 11/32, 3/8, 7/16 inches. Three 8-pt. sockets: 1/4, 5/16, 3/8 inch. With handy high impact plastic box. *Mail.*

84 A 4808—Ship. wt. 1 lb.....$4.19



1/2-in. Drive Socket Set

(9) 14-Pc. Basic POWR-KRAFT Set. With wide range of most useful sizes. Includes 3½-in. extension 11½-in. flex handle, crossbar; ten 12-pt. sockets: 7/16, 1/2, 9/16, 5/8, 11/16, 3/4, 13/16, 7/8, 15/16, 1 inch. Tool box is 12¼x3⅝x2⅛ inches. Ideal for homeowners, hobbyists, etc. Made of tough, chromed alloy steel, highly polished . . . rust resistant.

84 A 4872—Ship. wt. 5 lbs......$8.94

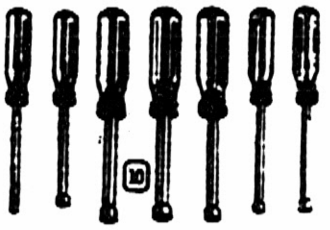
POWR-KRAFT Nut Drivers

(10) 7-Pc. Nut Driver Set. Sizes 3/16, 7/32, 1/4, 9/32, 5/16, 11/32, 3/8 in. Excellent for hard-to-reach nuts. Shockproof handles, steel shanks, case.

84 A 4789—Ship. wt. 2 lbs......$5.49

Individual Nut Drivers. Sizes 3/16, 7/32, 1/4, 9/32, 5/16, 11/32, 3/8 in. Wt. 6 oz. ea.

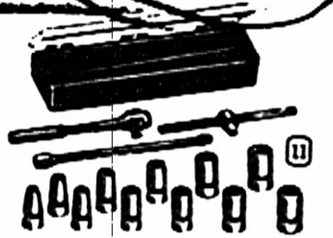
84 A 4790—State size........Each 89c



1/4-in. Drive Socket Set

(11) POWR-KRAFT 15-Pc. Set. Designed for close quarter work. Includes reversible ratchet, 6-in. extension, sliding "T" handle. Eight 6-pt. sockets: 3/16, 7/32, 1/4, 9/32, 5/16, 11/32, 3/8, 7/16 in.; 8-pt. sockets: 1/4, 5/16, 3/8 inch. Sturdy case. Fully guaranteed, see Page 1070. *Mailable.*

84 A 4805—Ship. wt. 2 lbs... .$8.44



Socket Key Sets

(12) Socket Key Set. 3¼ in. long. 7 keys fit Allen Type No. 3 to 3/16-in. set screws. No. 1 to 1/4-in. cap screws. Folds closed like knife.

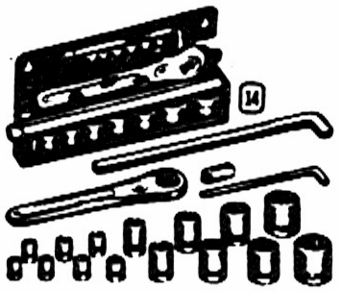
84 A 2903—Ship. wt. 4 oz....Set 99c

(13) Allen Head Type Socket Key Sets. Hardened tool steel, plastic case. REGULAR LENGTH. Sizes .05 to 1/4 in.

84 A 2904—Wt. 3 oz.....Set of 9 49c

EXTRA-LONG SET. Sizes 5/64 to 1/4 in.

84 A 2905—Wt. 3 oz.....Set of 7 69c



1/4 and 1/2-in. Hex Drive Set

(14) Include: screwdriver adapter, ratchet, 2 "L" handles, steel case.

For American Cars. Incl. eight 1/2-in. drive 12-Pt. sockets—7/16, 1/2, 9/16, 5/8, 11/16, 3/4, 7/8, 15/16 in.; five 1/4-in. hex sockets—1/4, 9/32, 11/32, 3/8, 7/16; two 1/4-in. sq. sockets—1/4 and 5/16 in.

84 A 4820—Ship. wt. 3 lbs......$3.89

Metric Sizes for Foreign Cars. Eight 1/2-in. drive 12-pt. sockets—12 to 19 millimeters; seven 1/4 in.—5 to 11 mm.

84 A 4821—Ship. wt. 3 lbs......$4.95

Dollar Saver

SAVE 10% MORE

on orders of $15 or more on items (15) to (32). Just subtract 10% from prices shown here.

POWR-KRAFT Top Quality Socket Set Accessories

(15) **Spark Plug Remover Socket.** Rubber grommet in upper socket housing grabs top of plug and pulls it out after loosening. Plugs cannot fall. 13/16-in. socket—1/2-in. drive.

84 A 4785D—Wt. 8 oz....$1.15

(16) POWR-KRAFT 6-Pc. Deep Well Socket Set. 1/2-in. drive. All sockets are 3⅛ in. deep. 12-pt. Socket sizes: 3/4, 11/16, 13/16, 7/8, 1 in. Steel case.

84A4790D-Wt.2½ lbs.Set$5.49

(17) **12-Point Deep Well Sockets.** 1/2-in. drive sockets about 3⅛ in. deep. 3/8-in. drive sockets are about 2¼ in. deep. *State Cat. No., Size.*

84 A 4789D—1/2-in. Drive. Av. wt. 8 oz.					
1/2 in.	84c	11/16 in.	84c	7/8 in.	$1.06
9/16 in.	84c	3/4 in.	84c	15/16 in.	1.16
5/8 in.	84c	13/16 in.	$1.06	1 in.	1.26
84 A 4848D—3/8-in. Drive. Av. wt. 5 oz.					
7/16 in.	67c	5/8 in.	78c	3/4 in.	78c
1/2 in.	67c	11/16 in.	78c	13/16 in.	87c
9/16 in.	67c				

(18) (19) POWR-KRAFT **Alloy Steel Sockets.** Chrome-plated. *State Cat. No. and Size.*

(18) 3/4-in. Square.

Size. In.	Wt. Lbs.	Wt. Oz.	12-Pt. 84 A 4880D
7/8		5	93c
15/16		5	93c
1		6	93c
1 1/16		6	93c
1 1/8		6	$1.05
1 3/16		6	1.05
1 1/4		7	1.16
1 5/16		7	1.26
1 3/8		9	1.26
1 7/16		11	1.46
1 1/2		11	1.49
1 9/16		12	1.69
1 5/8	1	0	1.69
1 11/16	1	6	2.04
1 3/4	1	8	2.14
1 13/16	1	10	2.16
1 7/8	1	10	2.44
2	1	14	2.46
2 1/8	2	0	3.26
2 3/16	2	2	3.46
2 1/4	2	4	3.96
2 3/8	3	4	4.46

(19) 1/2-in. Square

Size. In.	Wt. Oz.	8-Pt. 84 A 4868D	12-Pt. 84 A 4865D
3/8	1	48c	......
7/16	1	48c	42c
1/2	2	51c	45c
9/16	2	53c	45c
19/32	2	......	45c
5/8	2	59c	45c
11/16	2	......	48c
3/4	2	68c	53c
25/32	3	......	55c
13/16	3	......	58c
7/8	3	......	62c
15/16	4	......	66c
1	4	......	69c
1 1/16	5	......	78c
1 1/8	5	......	83c
1 1/4	7	......	93c

All POWR-KRAFT parts will fit other brands of the same square drive size.

1/4-in. Sq. Drive Sockets. Choice of 3/16, 7/32, 1/4, 9/32, 5/16, 11/32, 3/8, 7/16 in. 6-pt. openings.

84 A 4782 D—*State size.* Wt. ea. 1 oz. Each 27c

3/8-in. Sq. Drive Sockets. 12-pt. *State size.* Wt. 4 oz.

84 A 4847D—7/16, 1/2, 9/16, 5/8, 11/16, 3/4 in. Ea. 39c

3/8-in. Sq. Drive Sockets. 6-pt. Choice of 3/8, 7/16, 1/2, 9/16, 5/8, 11/16, 3/4 in. *State size.*

84 A 4838 D—Ship. wt. each 4 oz......Each 39c

13/16 in...Each 39c; 7/8 in............Each 49c

(20) **Stud Remover.** Use with any 1/2-in. drive handle. 1/4 to 3/4-in. capacity.

84 A 4869 D—Ship. wt. 1 lb. 4 oz. $3.65

(21) **Flex Sockets.** For awkward nut removal. 3/8-in. drive. Sizes: 3/8, 7/16, 1/2, 9/16, 5/8, 11/16, 3/4 in. Ship. wt. 3 oz.

84 A 4898 D—*State size*.....Each $1.56

(22) **Drag Link Socket.** To tighten slotted nuts. 1/2-in. sq. drive. Ship. wt. 4 oz.

84 A 4864 D—3/4 in. wide at tip.....75c

(23) **Universal Joints.** Short coupled. Adjust to 180°. Ship. wts. 2 and 4 oz.

84 A 4846 D—3/8-in. drive..........$1.58

84 A 4863 D—1/2-in. drive..........1.67

(24) POWR-KRAFT **Socket Adapters.** Attach to drive tang of ratchet, speeder handle, "T" or flex handle to use sockets of a different size drive. Ship. wt. 2 oz.

84 A 4837 D—*State size.* Increase 3/8 to 1/2-in. drive..................Each 68c

Decreases 3/8 to 1/4 inch..............68c

Decreases 1/2 to 3/8 inch..............68c

(25) **Extension Bars.** Ball locking feature—Holds sockets tight. Use with socket, handle for hard-to-reach places.

Drive	Lgth.	Cat. No.	Wt.	Each
1/4 in.	6 in.	84 A 4772D	3 oz.	48c
3/8 in.	5⅞ in.	84 A 4844D	4 oz.	92c
3/8 in.	9 in.	84 A 4845D	8 oz.	$1.13
1/2 in.	5 in.	84 A 4861D	8 oz.	96c
1/2 in.	10 in.	84 A 4862D	12 oz.	$1.16
3/4 in.	3½ in.	84 A 4881D	9 oz.	2.25
3/4 in.	8 in.	84 A 4878D	1¼ lbs.	1.79
3/4 in.	16 in.	84 A 4879D	2¼ lbs.	2.32

(26) **Reversible Ratchets.** Double pawl, multi-tooth action. Lengths: 5, 7½, 10½, 21 inches. Ship. wts. 6, 10 oz., 1 and 5 lbs.

84A4758D-1/4-in. sq. drive.$2.75

84A4843D-3/8 in. sq. drive. 3.89

84A4860D-1/2-in. sq. drive. 4.92

84A4877D-3/4-in. sq. drive.10.85

(27) **Spinner Handle.** Fits 1/4-in. sq. drive sockets. Alloy shank.

84A4760D-Ship. wt. 4 oz. $1.35

(28) **Sliding "T" Handles.** Wt. 12 oz.

84A4842D-3/8-in. drive $1.25

84A4859D-1/2-in. drive... 1.36

(29) (30) Flex Handle (29) With Cross-bar (30). 5, 15, 8¼, and 21 in. long. Wts. 3 oz., 12 oz., 2¼ lbs. 2¾ lbs. *State size.*

84 A 4751D—1/4-in. sq. dr. $1.35

84 A 4858 D—1/2-in. sq. dr. 2.95

84 A 4841 D—3/8-in. sq. dr. 2.35

84 A 4875 D—3/4-in. sq. dr. 5.48

(31) **Speeder Handles.** 18-in. Revolve to speed work. Ship. wts. 1 lb., 1 lb. 8 oz.

84A4840D-3/8-in. sq. drive.$1.58

84A4857D-1/2-in. sq. drive. 2.09

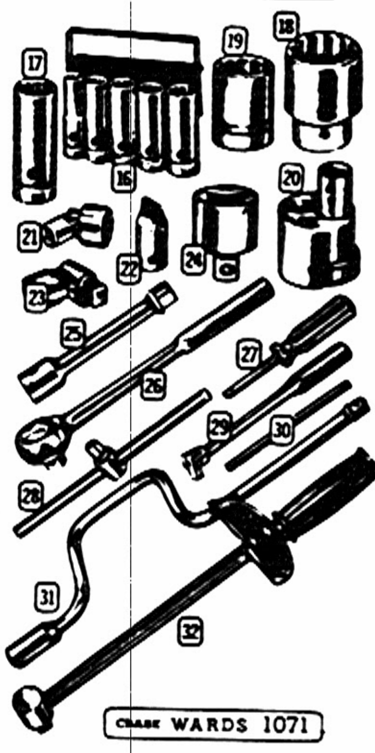
(32) **Torque Wrenches.** All steel chromium-plated. 20 in. long. Ship. wts. 2 lbs. 10 oz., 3 lbs.

Capacity 0-105 ft. lbs. 1/2-in. drive. For auto, marine, etc.

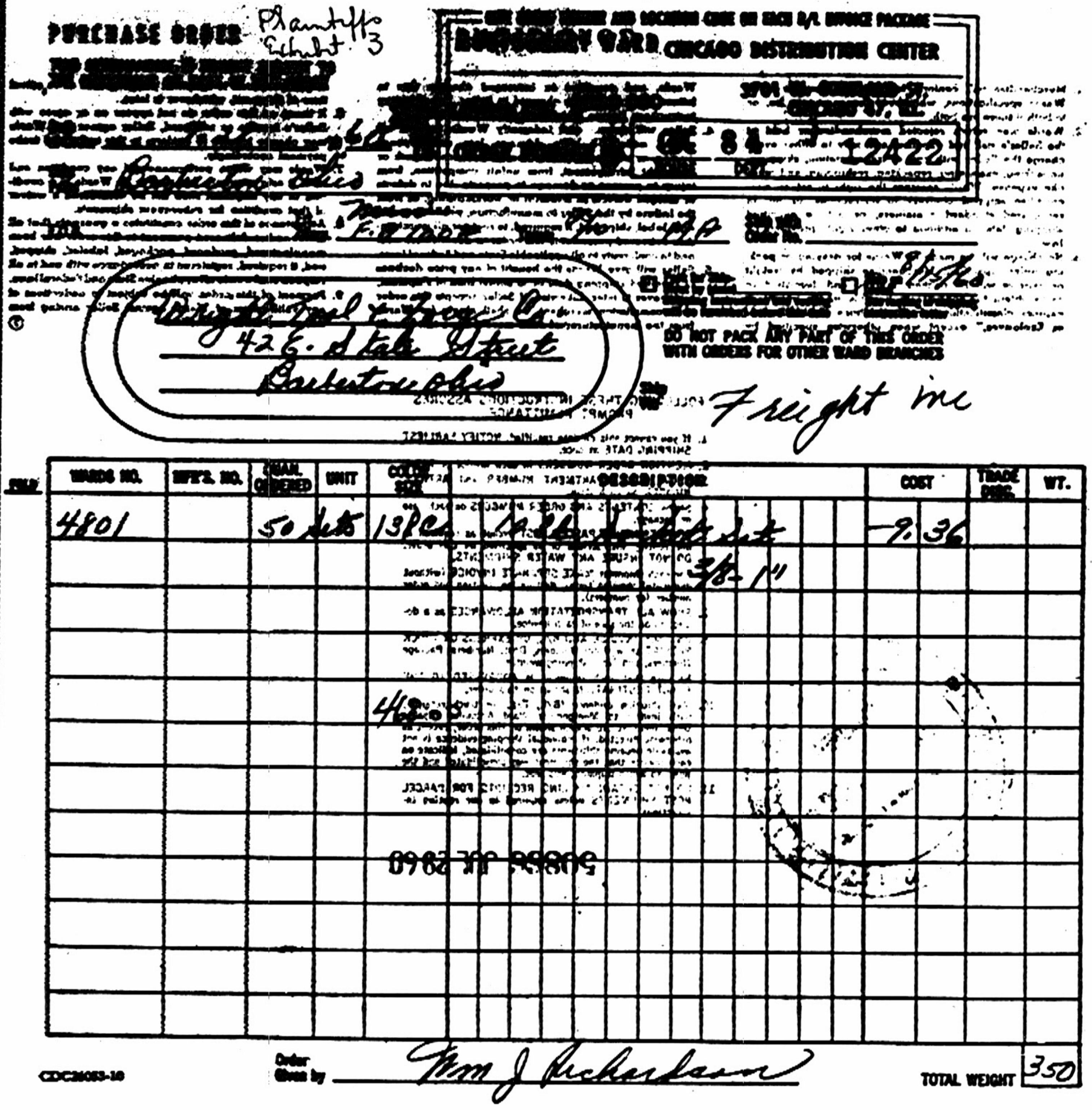
84 A 4896 D—Only.....$8.43

Capacity 0-150 ft. lbs. 1/2-in. drive. For trucks, heavy jobs.

84 A 4897 D—Only.....$10.39



Plaintiffs' Exhibit 3



PURCHASE ORDER

Plaintiffs Exhibit 3

CHICAGO DISTRIBUTION CENTER

CDC 84 12422

DO NOT PACK ANY PART OF THIS ORDER WITH ORDERS FOR OTHER WARD BRANCHES

Wright Tool & Forge Co.
42 E. State Street
Barberton, Ohio

Freight inc

WARDS NO.	MFR'S. NO.	QUAN. ORDERED	UNIT	COLOR SIZE	DESCRIPTION	COST	TRADE DISC.	WT.
4801		50 Sets		13 Pc	[illegible] Set	9.36		
					3/8-1"			
				46[illegible]				

CDC26053-10

Order Given by Wm J Richardson

TOTAL WEIGHT 350

Plaintiffs' Exhibit 4

MEMO
To: Richard Wright April 4, 1961
From: A. Bauer
Subject: TEN POINT SOCKETS

1. The distinctive design of the Ten Point socket is important to our line:
   - a. Its picture is featured on the covers of our catalogs.
   - b. It is the integral part of our trade mark. It appears (1.) on front and back covers of our catalog, (2.) on every page in the catalog, (3.) on labels in all sets, (4.) on displays, (5.) on our letterhead, (6.) on our invoices.

2. Dealers and mechanics are willing to pay more for Ten Point sockets. Current price differences are shown below in the popular ½″ dr series:

Size	12 pt socket	Ten Point socket
⅜″	$ .64	$ .98
¾″	.86	1.26
1⅛″	1.28	2.16
Total	$2.78	$4.40
		(58% higher price)

3. Sets designed with Ten Point sockets sell while eight point sets do not. Furthermore, they sell at higher prices, as indicated in Para. 2 above.

   Ten Point socket set sales have been well accepted per sales figures below:

1957-1958:	41.5% of all Wright sets sold were Ten Point sets.
1959-1960:	43.6% of all Wright sets sold were Ten Point sets.

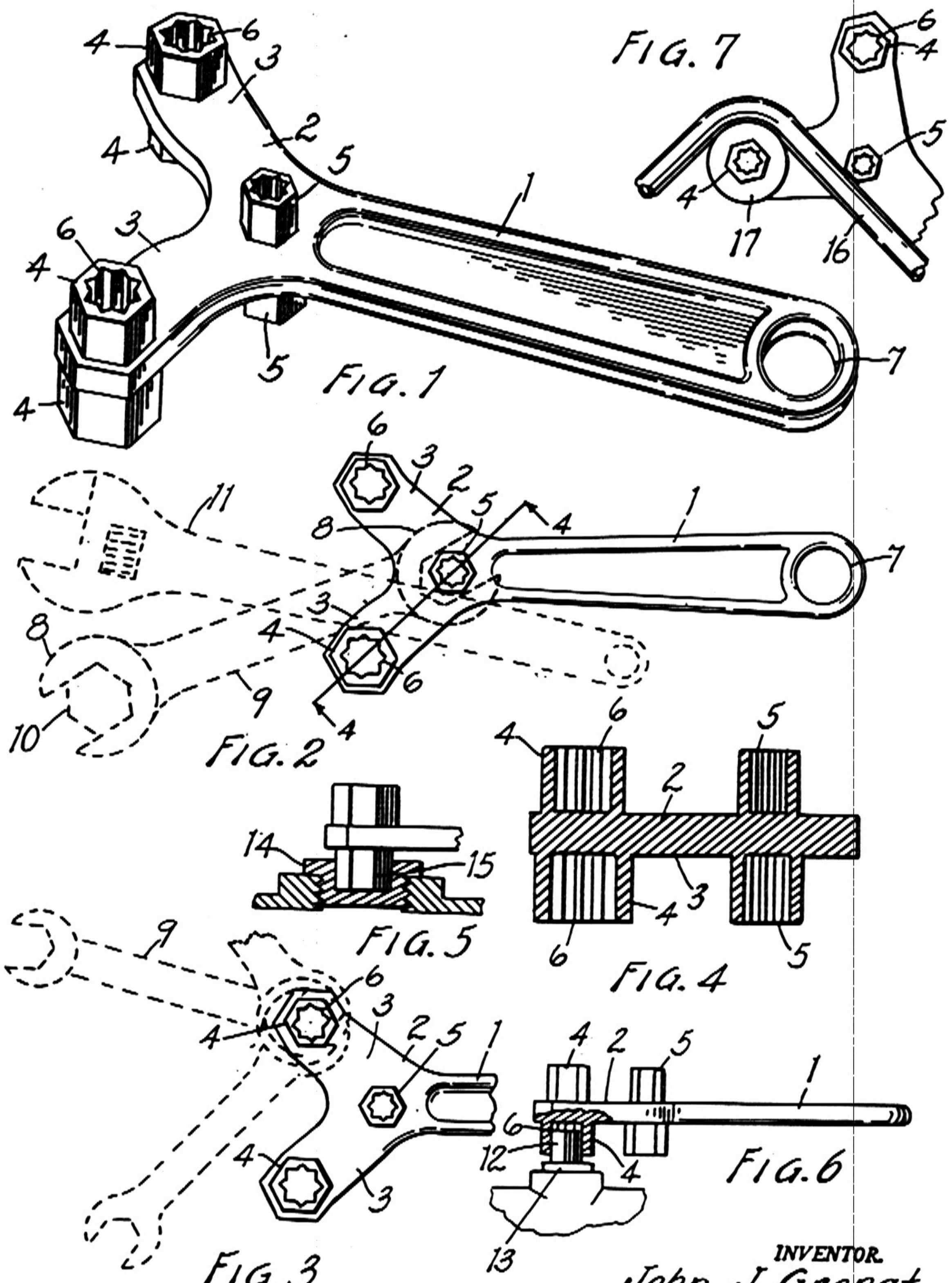
A. Bauer
A. Bauer

4/4/61
ew

Defendant's Exhibit 1-A

Aug. 5, 1952 J. J. GRENAT 2,605,665

TOOL ADAPTED FOR USE AS A WRENCH OR AS AUXILIARY
HANDLE FOR OTHER WRENCHES AND TOOLS
Filed Aug. 10, 1949



INVENTOR.
John J. Grenat
BY
Otis A. Earl
Attorney.

Patented Aug. 5, 1952 **2,605,665**

UNITED STATES PATENT OFFICE

2,605,665

TOOL ADAPTED FOR USE AS A WRENCH OR AS AUXILIARY HANDLE FOR OTHER WRENCHES AND TOOLS

John J. Grenat, Detroit, Mich., assignor to Motor Adapter Corporation, Detroit, Mich., a corporation of Michigan

Application August 10, 1949, Serial No. 109,562

4 Claims. (Cl. 81—121)

This invention relates to a tool adapted for use as a wrench or as auxiliary handle for other wrenches and tools.

The main objects of this invention are:

First, to provide a tool which is adapted for use as a wrench for various sizes and kinds of work and also for use as an auxiliary or extension handle for wrenches and other tools facilitating the manipulation thereof in various working conditions.

Second, to provide a tool having these advantages which is very easily manipulated for the various kinds of work for which it is adapted.

Objects relating to details and economies of the invention will appear from the description to follow. The invention is defined and pointed out in the claims.

A preferred embodiment of the invention is illustrated in the accompanying drawing, in which:

Fig. 1 is a perspective view of a tool embodying my invention.

Fig. 2 is a side elevational view thereof showing two adaptations to other wrenches as an extension or auxiliary handle for wrenches shown by dotted lines.

Fig. 3 is a fragmentary side elevational view showing other adaptations to wrenches as an extension handle therefor, a wrench being indicated in three positions by dotted lines.

Fig. 4 is an enlarged sectional view on a line 4—4 of Fig. 2.

Fig. 5 is a fragmentary view partially in section illustrating the tool as used on a plug or as it would be used on an "Allen type" screw.

Fig. 6 is a fragmentary view partially in section illustrating an adaptation to another form of plug or as the tool would be applied to a nut or the like.

Fig. 7 is a side elevational view illustrating the tool as used for a bending tool.

The tool of my invention comprises a handle 1 having a head 2 integral therewith. The head is provided with forwardly diverging arms 3. Each arm is provided with opposed pairs of polygonal jaw members 4—4 and also with a central pair of such polygonal jaw members 5—5. The jaw members illustrated are hexagonal and that is a desirable shape. The jaw members are formed integrally with or otherwise fixedly secured by welding so that they become an integral part of the tool. Each jaw member is provided with an internal jaw socket 6, desirably of the serrated type.

The several jaw members are of relatively graduated external diameter and their sockets are of relatively graduated internal diameter. The handle is provided with an opening 7 at its outer end so that it may be hung up. The pairs of jaw members are so spaced that one of the jaws 8 of a double jaw wrench 9 may be engaged with one of the jaw members 4 or 5 in different angular relations as shown in Fig. 3. Thus engaged, the tool becomes an extension or auxiliary handle for the wrench 9.

It is desired to point out that there are many wrenches of this type in which the handle is relatively short and which do not provide sufficient leverage for properly tightening or loosening a nut. Also there are various other work conditions in which it would be desirable to use the wrench 9 but where the space is not sufficient to receive the hand of the operator. With the tool of my invention properly engaged in the angular relation best suited for the particular condition, not only additional leverage is provided but the auxiliary tool permits the wrench to be positioned and operated under conditions which would not otherwise permit its practical use.

There are other situations where it is desirable to engage one of the jaws 8 with one of the center jaw members 5 and fulcrumingly engage the handle of the wrench 9 with one of the arm jaw members 4. This provides for further adaptation to meet particular conditions and may be resorted to where it is desired to manipulate a wrench of this type, the jaws of which do not fit any of the jaw members of the tool.

A nut 10 is indicated by dotted lines in Fig. 2. In Fig. 2, I also illustrate by dotted lines an adjustable jaw wrench 11, which wrenches commonly have jaws only at one end. For that kind of a wrench the tool is engaged with the handle by positioning the handle between one of the arm jaws and the central jaw. Pipe wrenches may also be engaged in the same manner as the wrench indicated at 11.

In all of these adaptations as an extension handle or auxiliary handle, my tool is of great advantage not only in the matter of increasing leverage but the engagement in different angular relations; and, in conditions where the space does not permit a grasp of the handle of the work engaging tool, is of great practical importance. The provision of the internal sockets enables the engagement of nuts and other work such as the stems 12 of the plug indicated at 13. The jaw members may also be engaged with plugs 14 having jaw receiving sockets 15 or with the "Allen type" of screws.

My tool may also be used with bending rods, tubes and the like such as indicated at **16** and for that work, I preferably provide a collar **17** which is engaged over one of the arm jaw members and around which the work is bent by engaging the work with one of the central jaw members. This collar is peripherally circular. Work can be bent without the collar but the collar lessens the likelihood of kinking. Certain types of work require a short, rather sharp angular bend and in such work the collar is omitted and the work bent around the selected arm jaw member.

I have illustrated and described various adaptations of my tool and it is believed others will be apparent from this disclosure to those skilled in the art and to users of the tool. I have not attempted to illustrate various other adaptations and uses as I believe this disclosure will enable those skilled in the art to embody or adapt my invention as may be desired.

Having thus described my invention, what I claim as new and desire to secure by Letters Patent is:

1. A wrench also adapted for use as an auxiliary handle for other wrenches or tools and comprising a handle, spaced externally polygonal laterally projecting jaw members at one end of the handle, and an externally polygonal laterally projecting jaw member disposed on said handle inwardly from said jaws and intermediate thereof, said jaw members being of relatively graduated diameters whereby the jaw members may be engaged directly with work, or a jaw member may be individually engaged with the jaw of a wrench having jaws at each end thereof in selected angular relation to such wrench to provide an auxiliary handle therefor, or the intermediate jaw member may be engaged with the jaw of a wrench with its handle in supported levering engagement with one of said spaced jaw members to provide an auxiliary handle for the wrench so engaged, or the handle of a tool may be engaged between the intermediate jaw member and one of said spaced jaw members to provide an auxiliary handle therefor.

2. A tool of the character described comprising a handle spaced polygonal laterally projecting jaw members at one end of said handle, and a laterally projecting polygonal jaw member disposed on said handle inwardly from said jaw members and intermediate thereof, said jaw members being of relatively graduated diameters, said jaws being spaced to permit their individual engagement with jaws of a wrench having jaws at each end thereof in selected angular relation thereto to constitute an extension handle for the wrench so engaged, said spaced jaws being spaced relative to said intermediate jaw to permit the positioning of a tool handle between them to provide an angularly disposed auxiliary handle.

3. A wrench also adapted for use as an auxiliary handle for other wrenches or tools and comprising a handle and a head integral with the handle and having forwardly diverging arms, laterally projecting jaw members at the outer ends of the arms, and a jaw member projecting laterally from said head, said jaw members having polygonal relatively graduated internal jaw sockets whereby the jaw members may be engaged directly and externally with work.

4. A wrench also adapted for use as an auxiliary handle for other wrenches or tools and comprising a handle and a head integral with the handle and having forwardly diverging arms, laterally projecting externally polygonal jaw members at the outer ends of the arms and an externally polygonal jaw member projecting laterally from said head, said jaw members being of relatively graduated diameters.

JOHN J. GRENAT.

REFERENCES CITED

The following references are of record in the file of this patent:

UNITED STATES PATENTS

Number	Name	Date
277,265	Giles	May 8, 1883
1,463,077	Gandell	July 24, 1923
2,142,589	Olson	Jan. 3, 1939
2,480,565	Franks et al.	Aug. 30, 1949

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Number	Country	Date
582,192	Germany	Aug. 10, 1933
404,910	Great Britain	Jan. 25, 1934
594,111	Great Britain	Nov. 3, 1947
599,423	Great Britain	Mar. 11, 1948

Defendant's Exhibit 1-B

No. 838,109. PATENTED DEC. 11, 1906.

F. A. HANES & W. STAPLES.

RATCHET WRENCH.

APPLICATION FILED JUNE 15, 1906.

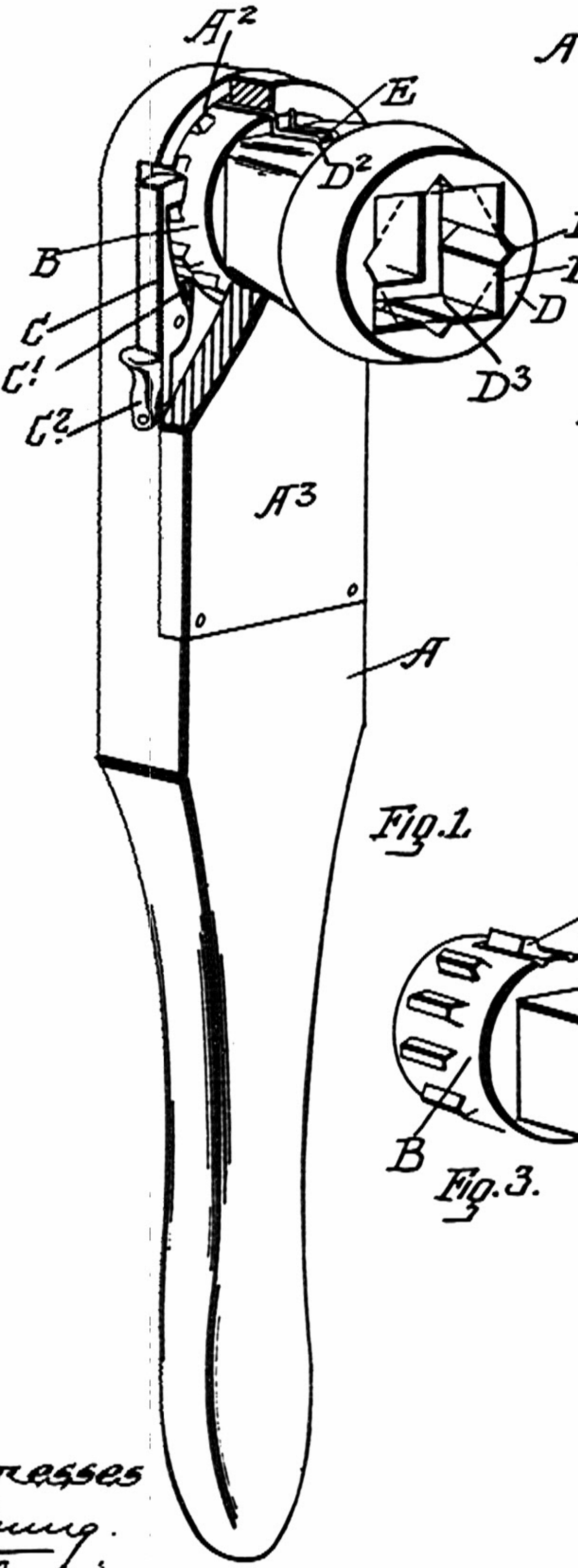


Fig.1

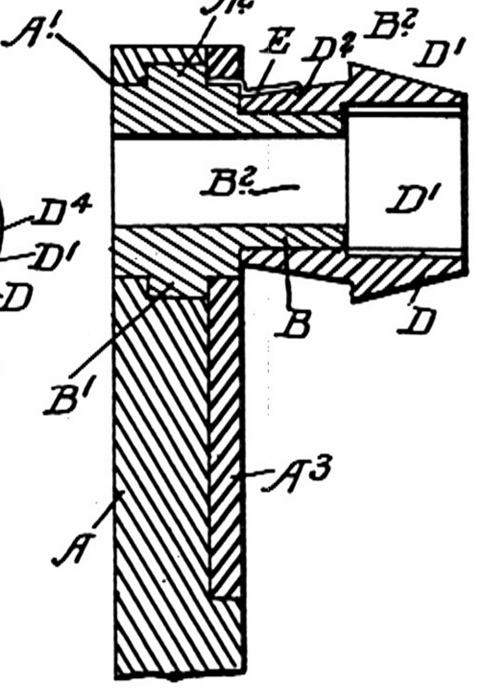


Fig.2.

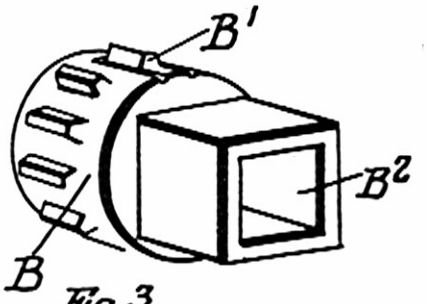


Fig.3.

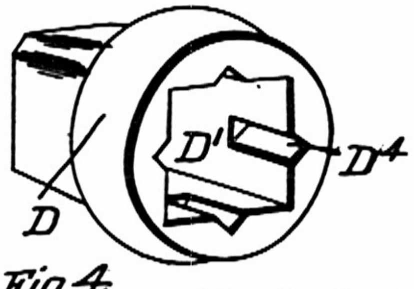


Fig.4.

Witnesses

Inventors.
F.A. Hanes
W. Staples
by Fred B. Fetherstonhaugh
Att'y

UNITED STATES PATENT OFFICE.

FREDERICK A. HANES AND WILLIAM STAPLES, OF HUNTSVILLE,
ONTARIO, CANADA.

RATCHET-WRENCH.

No. 838,109. **Specification of Letters Patent.** **Patented Dec. 11, 1906.**

Application filed June 15, 1906. Serial No. 321,926.

To all whom it may concern:

Be it known that we, FREDERICK ALONZO HANES, agent, and WILLIAM STAPLES, carpenter, of the town of Huntsville, in the district of Muskoka, in the Province of Ontario, Canada, have invented certain new and useful Improvements in Ratchet-Wrenches, of which the following is a specification.

Our invention relates to improvements in ratchet-wrenches patented to us in the United States of America on the 24th day of April, 1906, under No. 818,761; and the object of the present invention is to devise such an improvement in the construction of the wrench as will enable it to be applied close to the nut and allow of the bolt passing therethrough in order to enable the nut to be screwed home, and also to so form the bit that the one bit may be used on square and hexagonal nuts of equal diameter; and it consists, essentially, of a lever-arm, a hollow socket held therein engaged by spring-pressed dogs, the orifice of the socket extending through from side to side of the arm, a bit adapted to fit exteriorly of the socket and having the square-nut-engaging end provided with central V-shaped side notches, and a spring-finger adapted to connect the bit to the hollow socket, the parts being otherwise arranged and constructed in detail as hereinafter more particularly explained.

Figure 1 is a perspective view of our improved ratchet-wrench, partially broken away to exhibit the construction of the socket. Fig. 2 is a longitudinal section. Fig. 3 is a detail of the hollow socket. Fig. 4 is a detail of the bit.

In the drawings like letters of reference indicate corresponding parts in each figure.

A is the lever-arm, provided at one end with a recess A' extending therethrough and having an annular enlargement A^2.

B is a socket which is provided with gear-teeth B', which are designed to engage freely in the annular enlargement A^2.

A^3 is a plate which holds the socket in place, being suitably fastened to the one side of the arm and flush therewith, as indicated and as described in our former patent.

C represents the lever pawls or dogs, which are controlled by the springs C' and the pivotal clips C^2, as described in our former patent.

It will be seen that the plate A^3 holds the socket B in position and that such socket has an orifice B^2, which extends therethrough, through which the threaded end of the bolt may freely extend. The outer end B^2 of the socket B is preferably square or sided, as indicated in the drawings.

D is a bit the orifice D' of which at the inner end is adapted to fit over the square end B^2 of the socket B.

E is a spring-finger which is formed, as indicated in Figs. 1 and 2, to fit around one of the gear-teeth B' at the inner end and extend at the outer end into the notch D^2 in the bit D.

It will be noticed that the bit D is provided with a square socket D^3, having central V-shaped notches D^4, adapted to receive the corners of a hexagonal nut of equal diameter to the square nut. This will be readily understood on reference to the dotted position of the hexagonal nut indicated in Fig. 1.

By such a construction of wrench as we have described we are enabled by means of the spring-catch E to insert bits of different sizes in position and on account of the construction of the socket at the end of the bit to take both square and hexagonal nuts of equal diameter. We also can readily spring the bit close down to the nut and yet obviate any liability of the threaded end of the bolt, which extends through the nut, from interfering with the screwing home of the nut on the bolt, as such threaded end of the bolt will extend freely through the orifice B^2, hereinbefore referred to.

What we claim as our invention is—

In a wrench, the combination with an arm having an orifice formed in the end thereof provided with an annular enlargement and a retaining-plate, of a socket having gear-teeth fitting in the annular enlargement and having an orifice extending therethrough and through the arm, and a bit fitting exteriorly on the outer end of the socket, and a spring-finger extending around one of the gear-teeth of the socket at one end and into a notch in the bit at the opposite end as and for the purpose specified.

F. A. HANES.
WILLIAM STAPLES.

Witnesses:
W. M. DUNCAN,
FRED. C. LEIB.

Defendant's Exhibit 1-C

April 17, 1951 M. OREY ET AL **2,549,515**

WRENCH HAVING PIVOTED HANDLE AND REMOVABLE SOCKET

Filed April 26, 1948

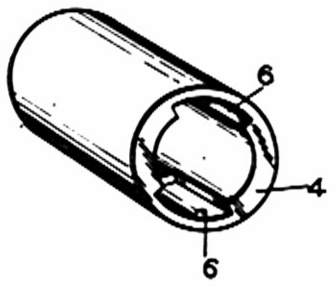


Fig 2

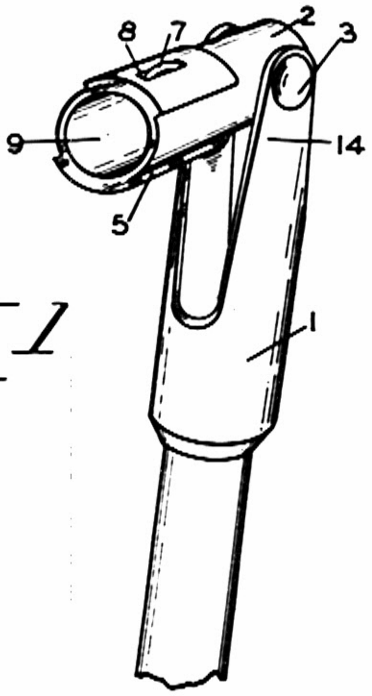


Fig 1

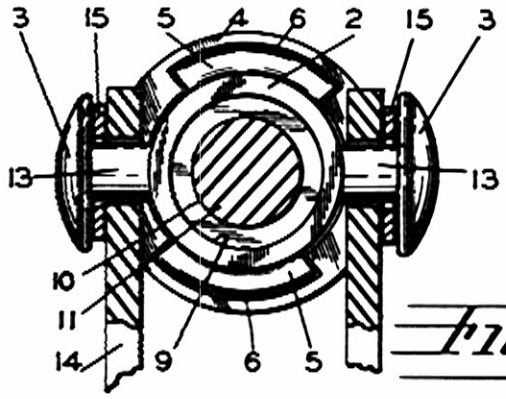


Fig 4

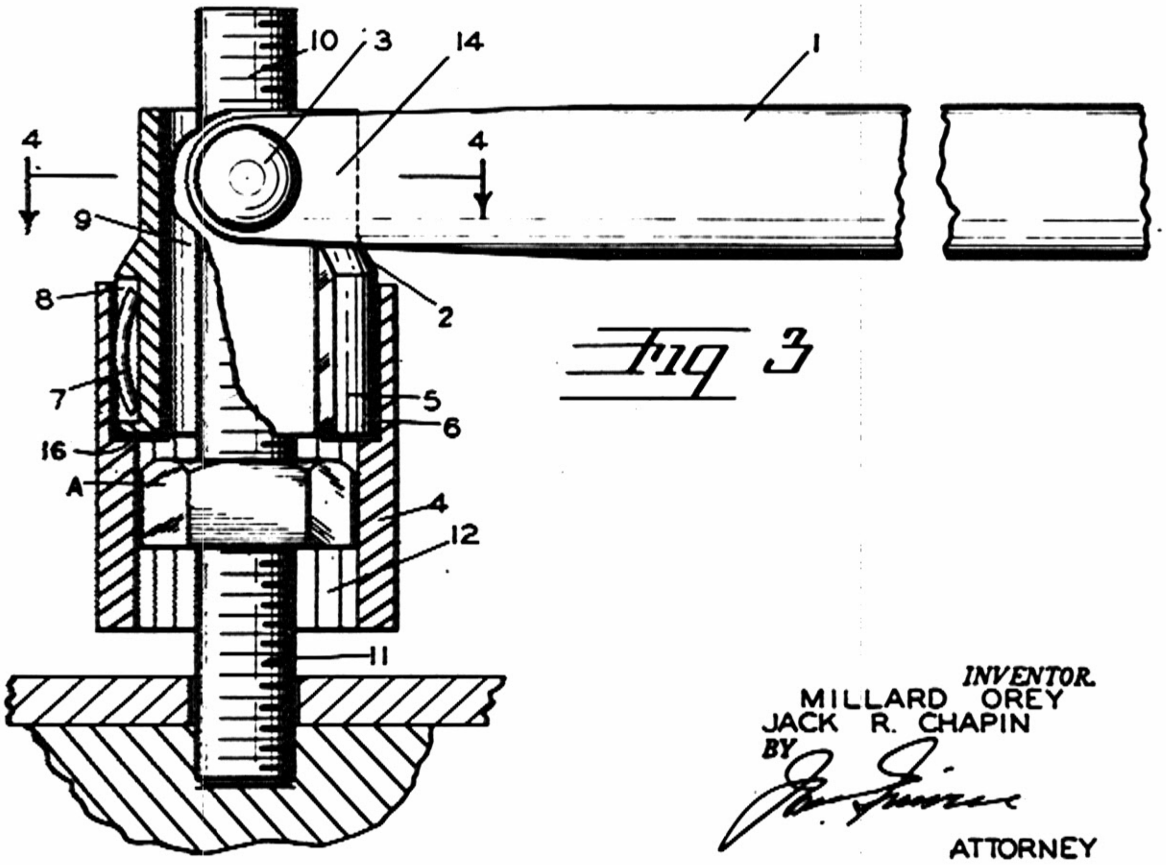


Fig 3

INVENTOR.
MILLARD OREY
JACK R. CHAPIN
BY
ATTORNEY

Patented Apr. 17, 1951

2,549,515

UNITED STATES PATENT OFFICE

2,549,515

WRENCH HAVING PIVOTED HANDLE AND REMOVABLE SOCKET

Millard Orey and Jack R. Chapin, Salem, Oreg.

Application April 26, 1948, Serial No. 23,256

1 Claim. (Cl. 81—121)

This invention relates to socket wrenches and is particularly adapted to wrenches having a swing handle.

In the use of socket wrenches, particularly those with swing handles, it has heretofore been necessary to provide a series of wrenches each having different sizes and types of sockets for use with different nuts or the like. Obviously, this is expensive and cumbersome, particularly if the tools are to be transported in a kit.

It is, therefore, the principal object of the present invention to provide a socket wrench construction, particularly of the swing handle type, having great versatility of use and which is adaptable for use with any desired type or size of nut-like member.

It is another object of the invention to provide a socket wrench, particularly of the swing handle type, adapted for cooperation with a removable socket member which may be one of a variety of types and sizes.

It is a further object of the invention to provide a socket wrench construction that comprises simplicity of organization, economy of construction, and efficiency in operation.

While we have adapted our invention particularly to swing drive socket wrenches, it is also admirably adapted to the drive fittings of ratchet wrenches and so forth.

Referring to the drawings:

Figure 1 is the swing end of a handle of a swing socket wrench showing the swing drive member at right angles to the handle.

Figure 2 is a socket adapted to fit the swing drive member of the handle.

Figure 3 is an enlarged detail view of the handle, the swing drive member having a socket associated therewith and being applied to a nut on a relatively long bolt illustrating the bolt passing through the swing drive member.

Figure 4 is a plan detail sectional view taken on line 4—4 of Figure 3 through the handle and the swing drive member. This view is rotated on the drawing ninety degrees from that shown in Figure 3.

Referring more specifically to the drawings:

Our new and improved wrench consists of a handle 1 pivotally connected to a swing drive member 2 at 3. The swing drive member 2 is adapted to be inserted in a standard socket 4, as best illustrated in Figures 3 and 4. The swing drive member has spline keys 5 formed on its outer periphery to cooperate with spline slots or keyways 6 formed within the rear ends of the sockets 4 and terminating in shoulders 16.

A spring 7 may be embedded within a cut-out portion 8 of the key 5 and is adapted to cause a friction fit between the swing drive member 2 and the socket 4, best illustrated in Figures 1 and 3. We do not wish to be limited to the type of interconnections between the swing member 2 and the socket 4, as any approved method could be employed connecting these two elements together.

Our invention consists in a longitudinal bore or opening 9 running through the swing member 2, which is adapted to receive an end 10 of a bolt 11, permitting the socket to revolve the nut A about said bolt in either tightening or loosening the same. Heretofore, the swing drive member was made up of a solid unit. Therefore, the length of bolt that could be operated on was determined by the depth of the nut receiving chamber 12 of the socket 4, but as stated above with our improved swing drive member the bolt can extend up through the same indefinitely, still permitting the handle of the wrench to be swung to either side in the operation of the socket, giving the advantages of a swing type socket wrench.

The handle is pivoted to outwardly extending stub shafts 13 by a bifurcated end 14 of the handle 1, best illustrated in Figure 4. There are various methods of pivotally mounting the swing drive member to the handle 1, and we do not wish to be limited to any particular form. Swing washers 15 maintain a working fit between the swing drive member and the handle 1 so that this member will remain at a fixed adjusted position until forcibly revolved within the bifurcated end of the handle.

The swing drive member is adapted to receive various size sockets within a given range of sockets, the principle being admirably adapted to any size of bolt. The smaller the bolt, the smaller will be the swing drive member 2 and its handle and vice versa, the larger the bolts being worked upon the larger will be the swing drive member 2 and its associated handle, but in all cases the drive member has a bore or opening therethrough through which the end of the bolt can pass and permit the swinging of the handle in the operation of the socket.

What we claim is:

A socket wrench, comprising a handle having a bifurcated end, a sleeve open throughout its length and pivotally mounted at its inner end between said bifurcations, so as to be swingable about a transverse axis; a plurality of longitudinally extending keys circumferentially spaced on the outside of said sleeve, longitudinal slots formed in said keys, resilient elements mounted in the longitudinal slots, a wrench socket sleeve open throughout its length and mounted on the outer end of the first-mentioned sleeve, the inside of said wrench socket sleeve having a plurality of complementary keyway slots to receive the keys and resilient elements so as to hold said sleeves together, and the keyway slots terminating in interior shoulders against which the keys on said first-mentioned sleeve abut.

MILLARD OREY.
JACK R. CHAPIN.

REFERENCES CITED

The following references are of record in the file of this patent:

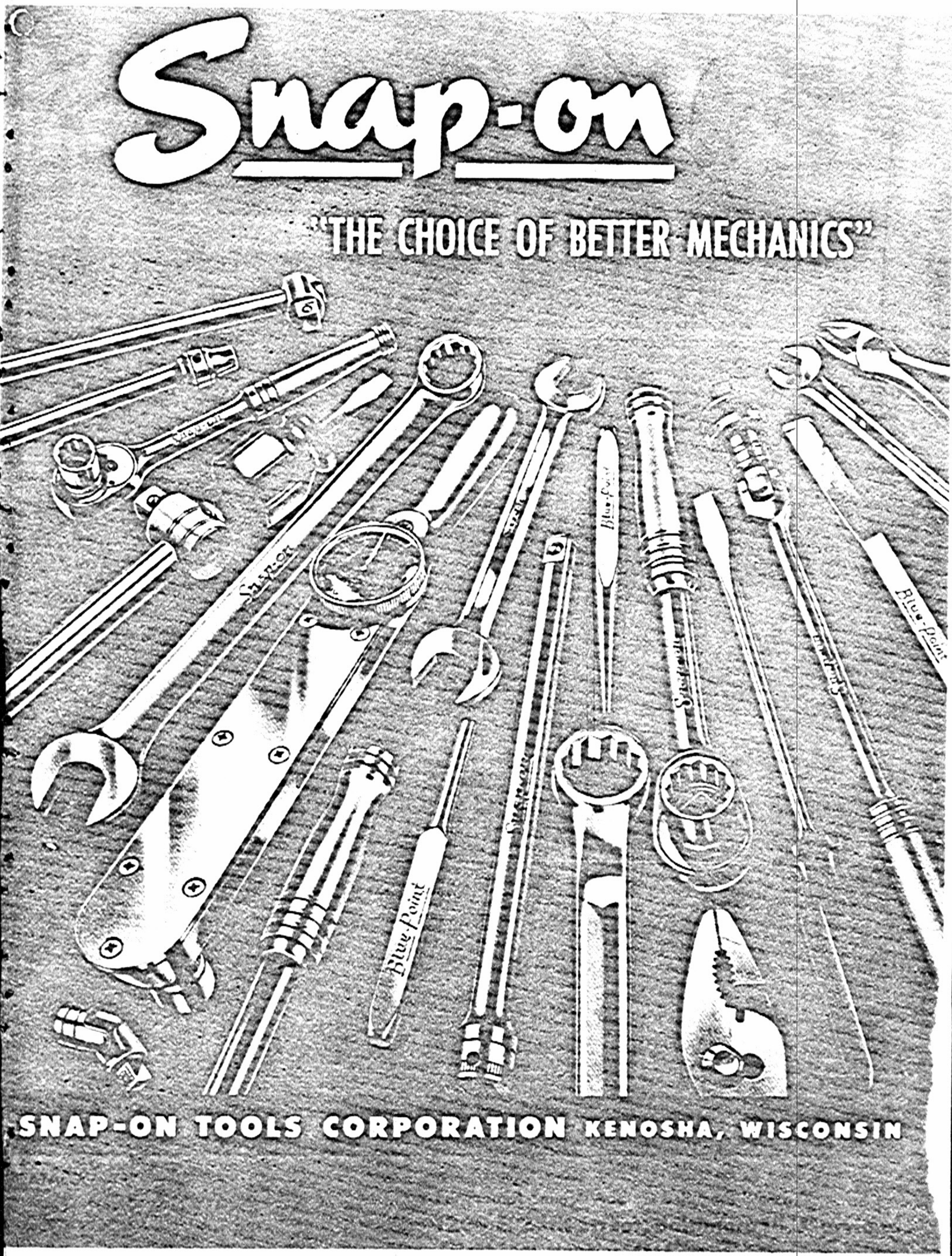
UNITED STATES PATENTS

Number	Name	Date
668,545	Sayers	Feb. 19, 1901
845,717	Miller	Feb. 26, 1907
851,068	Cowell	Apr. 23, 1907
1,401,817	Roberts	Dec. 27, 1921
1,811,137	Kress	June 23, 1931

FOREIGN PATENTS

Number	Country	Date
349,949	France	May 30, 1905

Defendant's Exhibit 3


Snap-on
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SNAP-ON TOOLS CORPORATION KENOSHA, WISCONSIN

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1 If you are located near one of the Snap-on branch sales offices listed below, come in and examine the tools listed in this catalog . . . see for yourself the outstanding quality of Snap-on products. We will be glad to demonstrate any tools for you or help you select those best suited to your needs.

2 Over 750 Snap-on "men" call regularly on garage and industrial shops coast-to-coast—one of these men covers your vicinity. Write or phone the nearest Snap-on branch and ask to have the Snap-on "man" call on you. He will show you the tools you are interested in—make delivery from his car stock—or arrange prompt shipment from the branch.

3 Select from the catalog the tools you need and use the order form provided for your convenience. Tools will be shipped promptly from our nearest branch office or delivered personally by the local Snap-on "man." To assure your complete satisfaction with purchases ordered and delivered by mail, we ask that you examine your purchase and, if for any reason a tool fails to meet with your approval, return it to us unused within ten days' time . . . we will gladly replace it with a similar tool or refund its cost, whichever you specify.

GENUINE SNAP-ON TOOLS ARE NOT AVAILABLE AT STORES

Long "the choice of better mechanics," Snap-on tools are easily available to tool users everywhere as described above. But you will not find them at hardware or other stores, accessory dealers, mill supply houses, etc.

The Snap-on "man" renders a regular, dependable service to his customers and is a familiar figure in every auto repair shop. This same service is available to the farmer, the businessman who renders product maintenance or needs tools for his own plant upkeep, the man who wants good tools in his home workshop, etc. Throughout industry Snap-on tools are recognized as top quality in design, material, and workmanship . . . "The choice of better mechanics."

Professional mechanics throughout industry—in every phase of product assembly, plant maintenance and customer service depend upon Snap-on tools—because they know that fine tool equipment pays big dividends in speed, fine workmanship and safety. The leader in the tool field for over 30 years, Snap-on can always be depended upon to serve you best with the finest tools that can be produced . . . let the actual working performance convince you of Snap-on superior design, construction and quality.

USE SNAP-ON'S DEFERRED PAYMENT PLAN

This plan makes it easy for you to buy all the tools you need today to help you work more profitably. Any order of $50.00 or over can be purchased by using Snap-on's easy payment plan. You can pay in convenient monthly installments. The local "Snap-on man" will gladly give you complete information . . . or simply use the enclosed mail order form requesting information or phone the branch address shown on the order form.

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We reserve the right to make changes in design or construction at any time without incurring any obligation to incorporate such changes in tools or equipment previously sold . . . also to discontinue the manufacture of any tools or equipment at such time as we deem it necessary. All dimensions shown in this catalog are subject to commercial tolerances.

★Note: This symbol is used throughout the catalog to indicate those tools which, because of their nature, are liable to abuse and therefore are not subject to replacement.

CATALOG "TR" ISSUED MAY, 1951

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SNAP-ON TOOLS CORPORATION

Manufacturers and Exclusive Distributors

KENOSHA, WISCONSIN

Factories: Kenosha, Wis., Mt. Carmel, Ill., Newport, Pa., Toronto, Ont.

★ ★ ★

BRANCH SALES OFFICES LOCATED IN 42 PRINCIPAL CITIES PROVIDE SNAP-ON SERVICE TO ALL IMPORTANT INDUSTRIAL AREAS

Tool stocks are warehoused at branch offices to afford fast delivery to customers everywhere. For prompt service, address communications to the branch address shown on this catalog cover. Key letters identify branch territories on opposite map.

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[illegible] E. 25th St.

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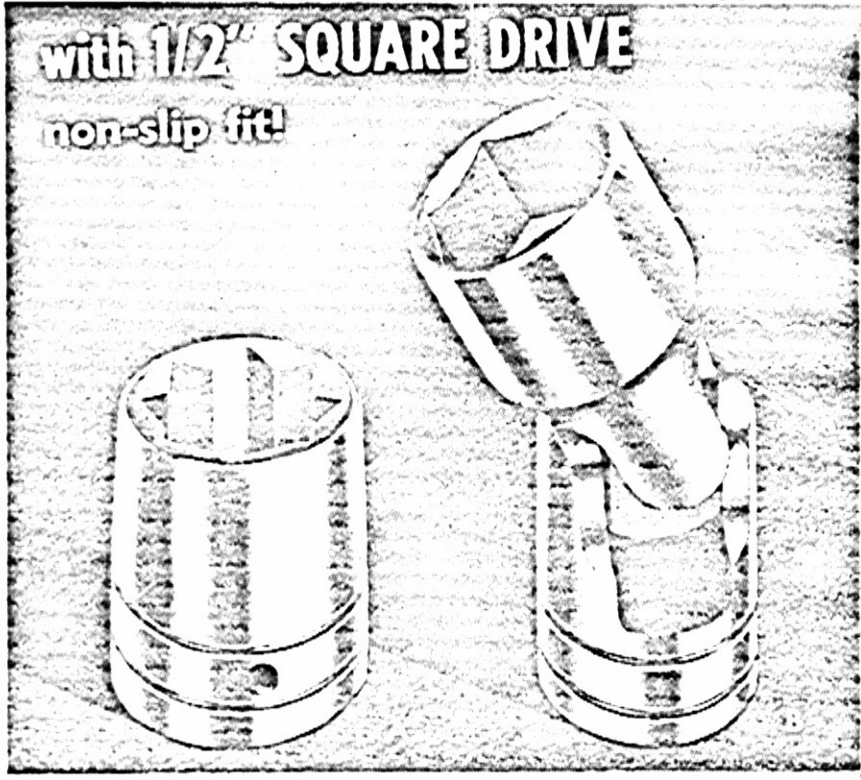


Superior Features Make

Snap-on

SOCKET WRENCHES

YOUR BEST BUY!

Finest Steel. No expense is spared in securing the finest available material. Should metallurgy develop even better steels, Snap-on will put them into use.

Continued Research. In laboratories equipped with modern chemical and physical testing equipment including machines constructed expressly for Snap-on and built to our exacting specifications, trained metallurgists conduct continuous research to develop the highest possible quality in our products.

Hot Broaching. Examine a Snap-on socket and note the smooth, clean cut wrench corners and walls. This is the result of broaching while the socket is heated and contributes strength as well as accuracy to the tool.

Heat Treatment. Only the most advanced processes are good enough for Snap-on tools and furnaces of several types are used to impart the exact necessary degree of hardness, toughness and strength to every part.

Chamfered Openings. All Snap-on sockets have a chamfered bevel on the wrench opening to aid in guiding the socket onto the nut.

Thin, Straight Walled Sockets. The use of special alloy steels make possible sockets having incredible strength, yet with thin straight walls that set down over nuts placed extremely close to obstructions. The thin walls permit close control of heat treatment and allow the heat to penetrate thoroughly and evenly. You get greater strength and lighter weight . . . important factors in every day use.

Size Accuracy. Tolerances are very closely held, each Snap-on socket being made a definite number of thousandths larger than the nut it fits. This close tolerance means a snug fit on the nut and prevents rounding it or wearing the socket. Close tolerances of square drive openings and handle drive squares eliminates socket wabble while affording easy interchange of units.

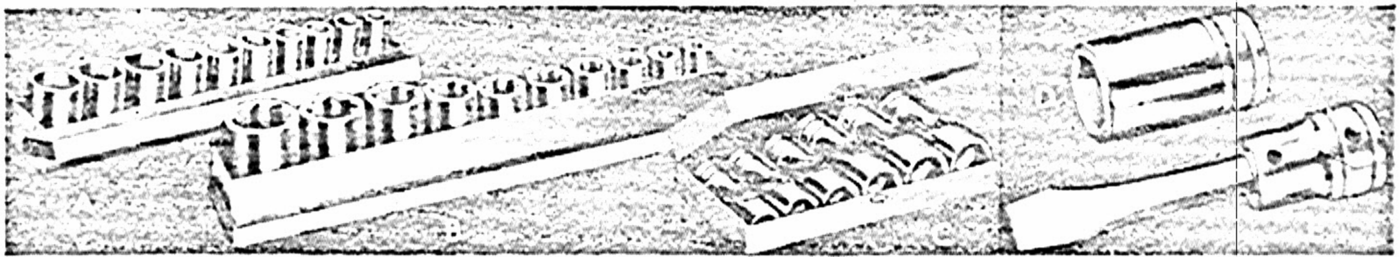
Appearance. Snap-on sockets and handles are chromium plated and polished to a lustrous rust resistant finish. They look like quality tools, they have the "feel" of quality—on the job they prove they are quality. Compare them with all others and you'll want Snap-on socket wrenches.

A **Double Square Sockets.** All have accurately broached, double square openings to allow maximum working convenience where handle movement is limited. Machined from steels famous for their toughness and durability. Get the complete set listed below and have the correct size available when you run into a job requiring the use of a square socket.

Wrench Size	Stock No.		O. D. Socket End	O. D. Drive End	Length
3/8"	SW-412		23/32"	7/8"	1 1/2"
7/16"	SW-414		[illegible]	7/8"	1 1/2"
1/2"	SW-416		29/32"	7/8"	1 1/2"
9/16"	SW-418		31/32"	29/32"	1 1/2"
5/8"	SW-420		1 1/16"	1"	1 1/2"
11/16"	SW-422		1 1/8"	1 1/8"	1 1/2"
3/4"	SW-424		1 [illegible]"	1 [illegible]"	1 1/2"
13/16"	SW-426		1 [illegible]"	1 [illegible]"	1 [illegible]"
7/8"	SW-428		1 1/2"	1 [illegible]"	1 [illegible]"
1"	SW-432		1 [illegible]"	1 [illegible]"	1 [illegible]"

B **Hexagon Flexockets.** An extremely compact, short coupled, single broached, hexagon flexocket that works freely from a wide angle. Reaches the nuts in tight, cramped quarters that would be impossible to get at and turn with regular sockets, or with any other type of wrench equipment. Its short coupling contributes to easy work in close quarters and it breaks over to a full 90° for final tightening where space permits. Increase the adaptability of your Master handles with the complete series listed below.

Wrench Size	Stock No.		O. D. Socket End	O. D. Drive End	Length
9/16"	SU-18		[illegible]	[illegible]	2 [illegible]"
5/8"	SU-20		1 [illegible]"	[illegible]	2 [illegible]"
11/16"	SU-22		1 [illegible]"	1 [illegible]"	2 [illegible]"
3/4"	SU-24		1 [illegible]"	1 [illegible]"	2 [illegible]"
13/16"	SU-26		1 [illegible]"	1 [illegible]"	2 [illegible]"
7/8"	SU-28		1 [illegible]"	1 [illegible]"	2 [illegible]"



A **310A-TW-T single Hex Socket Set.** 10 piece set. Consisting of TW-141, TW-161, TW-181, TW-201, TW-221, TW-241, TW-261, TW-281, TW-301 and TW-321 in KTR-237 metal tray as illustrated. Tools listed on page 24.

310A-TW Set. Above set, but tools only.

KTR-237 Metal Tray only.

317-TW-T Single Hex Socket Set. 17 piece set. Containing the complete series of TW-type single hexagon sockets shown and listed on page 24. TW-121 to TW-401 inclusive in KTR-234 double row metal tray.

317-TW Set. Above set, but tools only.

KTR-234 Metal Tray only.

B **310A-SQ-T Double Square Socket Set.** 10 piece set. Contains the entire range of square sockets listed above, in KTR-239 metal tray.

310A-SQ Set. Above set, but tools only.

KTR-239 Metal Tray only.

E **★Screw Driver Attachments.** Can be used on any master 1/2" square drive handle.

Bit Size	Complete Tool		Socket Only	Bit Only	Set Screw No.
	Stock No.	Lgth.	Stock No.	Stock No.	
[illegible]	★SW-284	4"	SW-284-1	★SW-284-2	SA-12-3
[illegible]	★SW-324	4"	SW-324-1	★SW-324-2	SA-12-3
[illegible]	★SW-405	4"	SW-405-1	★SW-405-2	SA-12-3

C **306-SU-B Hexagon Flexocket Set.** 6 piece set. Contains all flexockets listed above, in KR-206 sturdy metal box.

306-SU Set. Above set, but tools only.

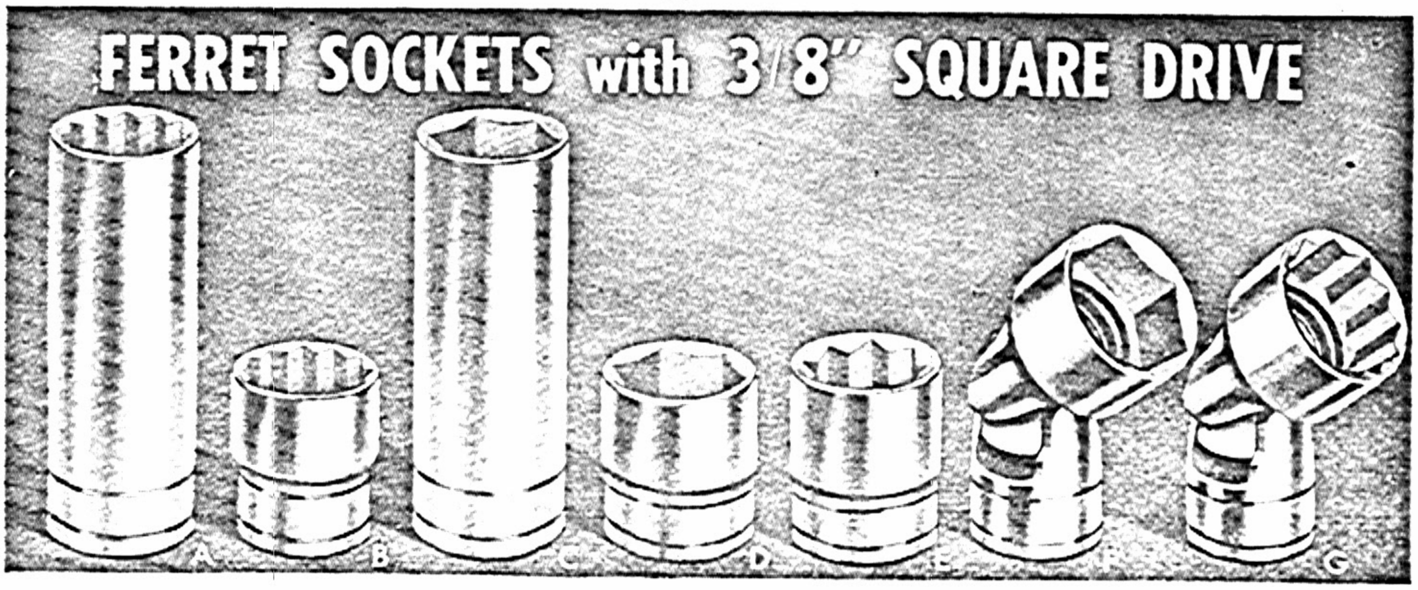
KR-206 Metal Box only.

D Semi Deep Single Hex Sockets

For extra tough jobs. Made with thicker walls and deeper broaching than standard sockets to provide better turning power for "Acorn" nuts and other toughies. Overall length of each socket is 2".

TW-241-S 3/4" hex opening, Nose O.D. 1
TW-261-S 13/16" hex opening, Nose O.D. 1
TW-281-S 7/8" hex opening, Nose O.D. 1
TW-301-S 15/16" hex opening, Nose O.D. 1

FERRET SOCKETS with 3/8" SQUARE DRIVE



NEW FERRET LINE

Offers The Finest Sockets And Attachments It Is Possible To Buy!

- **Longer Range of Sizes.** New sizes have been added to practically every series of Ferret sockets and attachments. These sizes, covering a range of 1/4" to 7/8", make the New Ferret Line a versatile combination of units.
- **New Socket Design** with beautiful chrome finish gives these tools a smooth, striking appearance . . . makes them stand out from other tools wherever they are used. They are easy to work with, too, for their thin walls enable them to squeeze into the closest places, yet afford the maximum strength necessary to break loose stubborn nuts and bolts. Larger, easier-to-read markings help you quickly spot the size you need.
- **Seven Socket Wrench Types.** The addition of the deep single hexagon socket series gives you three different styles of broaching in both the standard and extra deep lengths plus the handy Flexocket series. Seven different types, 56 different sockets in all.
- **Four Way Socket Grip.** The friction grip hole has been replaced with shallow indentations machined in all four sides of the square drive opening. This allows faster, more convenient interchanging of units as sockets grip securely on any of the four sides.
- **Chip-Curled Broaching.** No more rough bottoms inside the socket to collect dirt and grease. The smoothly rounded bottoming is formed during the hot broaching process to give you the finest in socket construction.
- **Wide Range of Attachments.** You can find a Ferret attachment for almost every job you'll run across, in sizes to fit your requirements. All have been redesigned to give you the finest in matched tool equipment.

A DEEP DOUBLE HEX

Wrench Size	Stock No.		Outside Diameter		Length
			Socket End	Handle End	
3/8"	SF-121		17/32"	21/32"	1 3/4"
7/16"	SF-141		39/64"	21/32"	1 3/4"
1/2"	SF-161		43/64"	21/32"	1 3/4"
9/16"	SF-181		49/64"	43/64"	2"
19/32"	SF-191		13/16"	21/32"	2 1/4"
5/8"	SF-201		27/32"	3/4"	2 1/4"
11/16"	SF-221		59/64"	27/32"	2 1/4"
3/4"	SF-241		1"	29/32"	2 1/2"
13/16"	SF-261		1 5/64"	31/32"	2 1/2"
7/8"	SF-281		1 5/32"	1 1/16"	2 1/2"

B STANDARD DOUBLE HEX

Wrench Size	Stock No.		Outside Diameter		Length
			Socket End	Handle End	
3/8"	F-121		17/32"	21/32"	29/32"
7/16"	F-141		39/64"	21/32"	29/32"
1/2"	F-161		11/16"	21/32"	15/16"
17/32"	F-171		5/8"	21/32"	15/16"
9/16"	F-181		49/64"	43/64"	15/16"
19/32"	F-191		13/16"	23/32"	1"
5/8"	F-201		27/32"	3/4"	1"
11/16"	F-221		59/64"	63/64"	1 1/16"
3/4"	F-241		1"	29/32"	1 1/32"
13/16"	F-261		1 5/64"	31/32"	1 1/8"
7/8"	F-281		1 5/32"	1 1/16"	1 1/4"

D STANDARD SINGLE HEX

Wrench Size	Stock No.		Outside Diameter		Length
			Socket End	Handle End	
1/4"	FS-081		3/8"	21/32"	29/32"
5/16"	FS-101		29/64"	21/32"	29/32"
3/8"	FS-121		17/32"	21/32"	29/32"
7/16"	FS-141		39/64"	21/32"	29/32"
1/2"	FS-161		43/64"	21/32"	15/16"
9/16"	FS-181		49/64"	43/64"	15/16"
5/8"	FS-201		27/32"	3/4"	1"
11/16"	FS-221		59/64"	63/64"	1 1/16"
3/4"	FS-241		1"	29/32"	1 1/16"

C DEEP SINGLE HEX

Wrench Size	Stock No.		Outside Diameter		Length
			Socket End	Handle End	
3/8"	SFS-121		17/32"	21/32"	1 3/4"
7/16"	SFS-141		39/64"	21/32"	1 3/4"
1/2"	SFS-161		43/64"	21/32"	1 3/4"
9/16"	SFS-181		49/64"	43/64"	2"
5/8"	SFS-201		27/32"	3/4"	2 1/4"

E STANDARD DOUBLE SQUARE

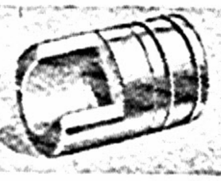
Wrench Size	Stock No.		Outside Diameter		Length
			Socket End	Handle End	
1/4"	F-308		15/32"	21/32"	27/32"
5/16"	F-310		9/16"	21/32"	27/32"
3/8"	F-312		41/64"	11/16"	15/16"
7/16"	F-314		49/64"	43/64"	1"
1/2"	F-316		7/8"	25/32"	1"
9/16"	F-318		1"	29/32"	1 1/16"
5/8"	F-320		1 1/16"	31/32"	1 1/16"

F SINGLE HEX FLEXOCKETS

Wrench Size	Stock No.	Outside Diameter		Length
		Socket End	Handle End	
5/16"	FS-10A	17/32"	21/32"	1 27/64"
3/8"	FS-12A	17/32"	21/32"	1 27/64"
7/16"	FS-14A	39/64"	21/32"	1 27/64"
1/2"	FS-16A	43/64"	21/32"	1 1/2"
9/16"	FS-18A	49/64"	11/16"	1 21/32"
5/8"	FS-20A	27/32"	11/16"	1 3/4"

G DOUBLE HEX FLEXOCKETS

Wrench Size	Stock No.		Outside Diameter		Length
			Socket End	Handle End	
5/16"	FU-10		17/32"	21/32"	1 27/64"
7/16"	FU-14A		39/64"	21/32"	1 27/64"
1/2"	FU-16A		43/64"	21/32"	1 21/32"
9/16"	FU-18A		49/64"	11/16"	1 11/16"
5/8"	FU-20A		27/32"	11/16"	1 3/4"
11/16"	FU-22A		31/32"	3/4"	1 15/16"
3/4"	FU-24A		1"	3/4"	1 59/64"



WEATHERHEAD SOCKETS

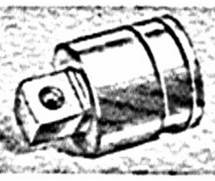
Remove and replace Weatherhead copper fittings without damaging these soft metal parts. 3 sizes, all 1 1/4" long.

FD-6 Socket. Fits 3/16" fitting.

FD-8 Socket. Fits 1/4" fitting.

FD-10 Socket. Fits 5/16" fitting.

FD-12 Socket. Fits 3/8" fitting.



HANDLE ADAPTORS

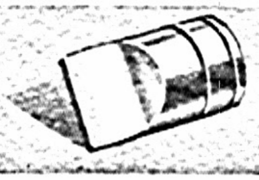
Enable you to interchange Ferret wrenches with Midget and Master units.

TM-1 Adaptor. Converts 3/8" sq. drive handles to 1/4".

TA-3 Adaptor. Converts 1/4" sq. drive handles to 3/8".

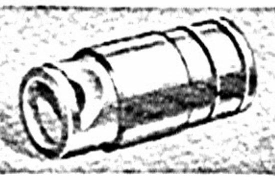
A-2 Adaptor. Converts 3/8" sq. drive handles to 1/2".

A-4 Adaptor. Converts 1/2" sq. drive handles to 3/8".



DRAG LINK SOCKET

F-22-A Drag Link Socket. A heavy duty, wide bladed screw driver attachment that will prove ideal for adjusting and tightening slotted nuts on steering gear assemblies, shock absorbers, drag links, etc. Blade is 11/16" wide and 7/64" thick. Overall length of tool 1 9/32".



PAN SCREW DRIVERS

For removing Chevrolet pan screws. The F-21 is for 1939 and earlier models and the F-21-N for 1940 up to the present models. Blades are 3/64" thick.

★F-21 Pan Screw Driver. Blade width 7/16", length 1 21/32".

★F-21-N Pan Screw Driver. Blade width 1/2", length 1 5/8".

BRIEF FOR APPELLANTS

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,668

RICHARD B. WRIGHT and
THE WRIGHT TOOL AND FORGE COMPANY,
Appellants,

v.

DAVID L. LADD, Commissioner of Patents,
Appellee.

Appeal from the United States District Court for the District of Columbia

United States Court of Appeals
For the
District of Columbia
FILED DEC 1 1961
Joseph W. Stewart
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STATEMENT OF QUESTIONS PRESENTED

The question is, in the trial de novo before the District Court for the District of Columbia when plaintiffs prayed the Court to authorize and direct the Commissioner of Patents to issue to plaintiffs, in accordance with the design patent statute, 35 U.S.C. 171, United States Letters Patent for a new and ornamental design for a tool, namely, a socket for a socket wrench, described and illustrated in accordance with the Patent Office Rules, in design application Ser. No. 42,897, filed September 10, 1956, did the Court understand the facts presented in the trial and apply the law to the facts properly, and consequently, whether appellants were denied the protection of the design patent statute for the invention by the District Court in dismissing the complaint below?

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,668

RICHARD B. WRIGHT and
THE WRIGHT TOOL AND FORGE COMPANY,
Appellants,

v.

DAVID L. LADD, Commissioner of Patents,
Appellee.

Appeal from the United States District Court for the District of Columbia

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal based on a Civil Action under 35 U.S.C. 145, which was filed January 22, 1960, requesting the District Court to authorize the Commissioner of Patents to issue a patent for the new design of a Socket Wrench, to Richard B. Wright, applicant, and The Wright Tool and

Forge Company, assignee, following the erroneous decision of the Board of Appeals of the United States Patent Office and the refusal of defendant to grant Letters Patent of the United States.

The action was filed after a decision by the Board of Appeals dated November 25, 1959 in application Ser. No. 42,897, in which the Board refused to allow the design claim to the new and ornamental design, the subject matter of said application. The application fully described and illustrated the new, original and ornamental design for a Socket Wrench, in compliance with the design statute and the rules of the United States Patent Office.

In view of the exhibits, the testimony of Richard B. Wright, Vice-President of The Wright Tool and Forge Company, and the citation of authorities for the proper application of the law to the facts, the Court was requested to find that appellants were entitled to protection under the design patent statute, 35 U.S.C. 171 for their new and ornamental design for a tool described and illustrated in the design patent application entitled "Socket Wrench", bearing Ser. No. 42,897, filed September 10, 1956.

This Court has appellate jurisdiction with respect to such action by the authority vested therein by 28 U.S.C., 1291 and 1294(1).

STATEMENT OF THE CASE

Richard B. Wright, one of the appellants, made an invention in the new and ornamental design of the socket for a socket wrench. Socket wrenches are and have been available on the open market for some time (JA 13-20) and it was desired by The Wright Tool and Forge Company to merchandise the new design, which had distinctive appearance and "eye appeal" to the public interested in purchasing such wrenches and familiar with the appearance of the conventional socket wrench (JA 13). Wright Tool and Forge therefore sought to protect the novel and ornamental design of the socket by making application Ser. No. 42,897 to the United States Patent Office on September 10, 1956.

The application for design protection under 35 U.S.C. 171 was not allowed by the Board of Appeals in the United States Patent Office and, therefore, under 35 U.S.C. 145, a Civil Action (JA 2) was filed in the District Court for the District of Columbia, requesting the Court to authorize and direct the Commissioner of Patents to issue a design patent to Richard B. Wright, applicant, for the new and ornamental, distinctive design of the socket for a socket wrench.

After trial of the case in the District Court for the District of Columbia, the Court dismissed the complaint without an opinion (JA 5), merely adopting the findings of fact and conclusions of law drafted by the defendant (JA 5-9).

STATUTES AND RULES INVOLVED

The Constitution of the United States

"Art. 1, Sec. 8. The Congress shall have power . . . To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

35 U.S.C. 171. Patents for Designs

"Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.

"The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided."

35 U.S.C. 145. Civil Action to Obtain Patent

"An applicant dissatisfied with the decision of the Board of Appeals may unless appeal has been taken to the United States Court of Customs and Patent Appeals, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The court may adjudge that such applicant is entitled to receive a patent for his invention, as specified in any of his claims involved in the decision of the Board of Appeals, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirements of law. All the expenses of the proceeding shall be paid by the applicant."

28 U.S.C. 1291. Final Decisions of District Courts

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. . . ."

28 U.S.C. 1294. Circuits in Which Decisions Reviewable

"Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeal as follows:

(1) From a district court of the United States to the court of appeals for the circuit embracing the district;"

Federal Rule of Civil Procedure 12(h) Waiver of Defenses

"A party waives all defenses and objections which he does not present either by motion . . . or in his answer . . ."

STATEMENT OF POINTS

1. The District Court erred in dismissing the Complaint.

2. The District Court erred in its conclusion of the law applicable to the design application before it.

3. The District Court erred in law in its application of the evidence on commercial success.

4. The District Court erred in concluding that plaintiffs-appellants were not entitled to a patent on the design claimed in their application for United States Letters Patent, Serial No. D-42,897.

5. The District Court erred in law in construing the pertinency of the references cited in denying the patentability of plaintiffs-appellants' claim in the subject application.

6. The District Court erred in admitting in evidence defendant-appellee's Exhibit No. 3 marked for identification over objection of plaintiffs-appellants.

7. The District Court erred in the inconsistent position taken on the significance of the teaching of defendant-appellee's Exhibit No. 3, Findings of Fact 4(d), 7 and 10, and the significance of "dished depressions at the ends of plaintiffs' socket", Finding of Fact 5.

8. The District Court erred in the application of law to rejection of a claim on multiple prior art references.

9. The District Court erred in law in its consideration of the prior art references in failing to view the design of the device as a whole as shown by the drawings and in failing to compare the design with something in existence, not with something that might be brought into existence by selecting individual features from prior art and combining them, particularly where combining them would require modification of the individual features.

10. The District Court erred in its interpretation of the teaching of the prior art patents separately and in combination.

11. The District Court erred in examining the design of the device increment by increment and feature by feature, rather than viewing the design of the device as a whole.

12. The District Court erred in finding that plaintiffs-appellants' design of a socket was such that it would have been obvious to a person having ordinary skill in the art of designing socket wrenches, contrary to the evidence.

13. The District Court erred in considering the design from a functional or utilitarian requirement.

14. The District Court erred in permitting defendant-appellee's counsel, over objection of plaintiffs-appellants' counsel, to lead the witness through testimony on utility in a matter of consideration of a design patent application as distinguished from a mechanical patent application.

15. The District Court erred in not directing the Commissioner of Patents to issue to plaintiffs-appellants Letters Patent of the United States on their design application Serial No. D-42,897, for a Socket Wrench.

SUMMARY OF THE ARGUMENT

Appellant, Wright Tool and Forge Company, is a small company, employing about 80 people, engaged in the manufacture of socket wrenches, handles therefor, and attachments, of designs which are conventional and highly competitive with a number of other manufacturers in this field. Appellants realized that to enhance the sale of their wrenches, they would have to have something that in appearance or design would differentiate their product line from the product lines of the competition. They set about to achieve a new design of socket wrench which, on a display stand with other socket wrenches, would be readily recognizable, different in appearance and have "eye appeal" to customers for socket wrenches. Appellants realized that they could build into a socket wrench other advantages or hidden qualities, but the buyer of socket wrenches looks at the over-all appearance in making his selection. A new design of socket wrench was invented by Richard B. Wright for The Wright Tool and Forge Company, which was manufactured and placed on the market on display stands in sales competition with conventional sockets also manufactured by Wright Tool and Forge, and it was found that they did, indeed, sell, indicating that the design was readily recognizable, distinctive and pleasing to the eye. It had customer appeal in spite of the fact that it sold for a slightly higher price. The testimony showed that over the last two years 172,000 sockets in accordance with the new design had been sold and, further, that it had been selected by a very discriminating merchandising organization, namely, Montgomery Ward, for featuring in their catalog and that it has been a successful sales item with Montgomery Ward as there have been continuous repeat orders.

The features of the design for the novel socket were incorporated in drawings and patent protection was applied for in the United States Patent Office, on the over-all appearance, the external configuration and contour which had rendered this design new and commercially acceptable. The Commissioner of Patents and, subsequently, the District Court for the District of Columbia, failed to apply the law on design cases properly, but rather seemed to consider the whole object piecemeal and find bits and pieces of its features in alleged prior art patents and publications, and on this piecemeal consideration, refused the design protection of the statute.

The Trial Court clearly committed reversible error in construing the pertinency of the references and in failing to apply the law properly to a design invention as distinguished from a more complicated invention in the mechanical arts, and in failing to find that appellants were entitled to the protection of the design statute for their new and ornamental design.

ARGUMENT

A Civil Action (JA 2) was filed under 35 U.S.C. 145 requesting the District Court for the District of Columbia to authorize the Commissioner of Patents to issue a patent for the new design of a socket for a socket wrench, Ser. No. 42,897, filed September 10, 1956, to Richard B. Wright, applicant, and The Wright Tool and Forge Company, assignee, following the refusal of the Board of Appeals of the United States Patent Office to grant Letters Patent of the United States affording them the protection of the design patent statute for the invention (JA 65, 66).

The application (JA 40, 40a) fully describes and illustrates the new, and original and ornamental design of a socket for a socket wrench, in compliance with the Statute and Rules of the United States Patent Office.

After a trial de novo before the District Court, the Court dismissed the complaint without an opinion (JA 5-9), adopting the findings of fact and conclusions of law of the defendant. The District Court committed reversible error as more particularly set forth in the statement of points of error above, which will be pointed out more fully in this argument.

The record shows that The Wright Tool and Forge Company is a small company in Barberton, Ohio, employing about 80 people and doing a gross annual business of about $1,000,000.00 (JA 12-13). They make one line of tools (JA 13), namely, socket wrenches, which are used in industry for manufacturing, maintenance and repair work, and extensively used in automotive service and repair work and to some extent by individual users such as farmers or home owners who might have a requirement for tightening nuts on bolts. This is a type of tool that appeals to the individual, whether he is self-employed, a home workshop mechanic, or a mechanic employed by a corporation or elsewhere in industry. It is quite common for tool makers and mechanics, even though employed by a corporation, to maintain as their personal property, a set of socket wrenches in their tool boxes.

The Wright Tool and Forge Company has been engaged, practically exclusively, in the manufacture of socket wrenches and has made what are commonly referred to as "conventional" socket wrenches, for some time (JA 12, 13).

In the field of "conventional" wrenches, The Wright Tool and Forge Company had nothing to offer except some hidden features, such as quality and precision of the tool, carefully selected material, etc., that were not apparent to the eye of a person inspecting a tool (JA 13). What Wright Tool needed was a new design that had some distinctiveness that would catch the eye of the buyer as such a person, selecting socket wrenches from a display of several types and designs, would glance over the display showing tools of conventional design of different manufacturers. The conventional sockets are identified not only by dimensions but by the number of "points" or V-shaped grooves that are apparent at the end of the socket, at the opening which engages the nut (JA 14).

This "point" designation means that the mechanic, selecting his conventional sockets, would see in a display many different manufactures of conventional sockets with wide range in price (JA 17), some quality, some cheap imitations, but all of them showing an opening with a regular evenly spaced set of grooves on the end. He could count the number of points corresponding to the number of grooves. The grooves are shallow and the walls are thin so that at a glance one cannot tell an 8 point from a 12 point or a 6 point from an 8 point without making some effort to count the number of points. This is clearly brought out in the record (JA 35, 36), where the Court could readily identify the new socket in issue before the Court by its general appearance. The record indicates, as to the 6 point and the 12 point, that there was nothing distinctive about them unless one counted the number of points (JA 35, 36).

Appellants realized that to enhance the sale of their wrenches, they would have to have something that in appearance or design would differentiate their product line from the product lines of the competition (JA 13). They set about to achieve a new design of a socket wrench which on a display stand with other socket wrenches would be readily recognizable, different in appearance and have "eye appeal" to customers for socket wrenches (JA 14, 15). Appellants realized that they could build into a socket wrench other advantages or hidden qualities, but the buyer of socket wrenches looks at the over-all appearance in making his selection. A new design of socket wrench was invented by Richard B. Wright for The Wright Tool and Forge Company.

The Wright Tool and Forge Company undertook to produce in an old field of tool manufacture, a different design that would have "eye appeal" and distinctiveness that would attract and hold the eye of the shopper with something different from the conventional design. (JA 13-15) The walls of the new socket are quite a bit thicker around the aperture in the end so that the design of the end is quite clearly emphasized. Its appearance prevents it from being confused with conventional 6 or 12 point sockets when placed side by side in a display rack. The "Ten Point" trade name was adopted for this new design (JA 13) which is quite a departure from the conventional design, inasmuch as the new design does not have ten points, and any mechanic knows there are no five-sided or ten-sided nuts.

The witness, Mr. Richard B. Wright, testified that in this old field, to achieve a new design, it was necessary to produce something which differentiated their product or their line, as much as possible, from the competition. (JA 13-15) He stated they have a lot of competitors making similar products, namely, conventional socket wrenches, and The Wright Tool and Forge Company wanted something different, something that would be recognized as a distinctive design, something with "eye appeal" (JA 13). He stated that they have many differences in their product, e.g., material, and advantages that are primarily hidden so that in order to have a distinctive product, they had to have something different in design that the buyer could see as he was looking over a display. If the Court should place Appellants' Exhibits 5, 6 and 7 side by side with the square ends on the Bench and view the three exhibits from an angle about 45 degrees from above, the distinctiveness of design of appellants' socket for a socket wrench from the conventional socket wrenches will be readily apparent.

Initial production quantities were manufactured and placed on the market, on display stands, in sales competition with conventional sockets also manufactured by Wright Tool and Forge, and it was found that they did indeed sell (JA 14), indicating that the design was acceptable to the buyer, due to the fact that it was readily recognizable, distinctive and pleasing to the eye. It had customer appeal.

The testimony shows that the Montgomery Ward organization, one of the two largest merchandising organizations in the United States, have adopted The Wright Tool and Forge new design to be displayed in their catalog, plaintiffs' Exhibit No. 2 (JA 69), with conventional designs of socket wrenches on the same page of the catalog and the testimony of Mr. Wright was that the experience of The Wright Tool and Forge Company and Montgomery Ward has been that the new design has sold despite being displayed alongside of the conventional designs which sell at a cheaper price (JA 15, 16, 17). Appellants Exhibit No. 4 (JA 71) admitted in evidence, from which Mr. Wright testified, clearly shows that the new design has been well accepted by dealers and mechanics who are willing to pay more for the new design here in issue, by as much as 58% higher price.

The public acceptance of the new design over the conventional design, equally available at a lower price, is certainly good evidence of the distinctiveness and eye appeal of the new design. One does not use the term "beauty" in merchandising tools, but appearance of tools is an important factor in public acceptance (JA 25, 26 and 30)

The witness testified that the Patent Office refused to allow the claim to the new design based upon three prior art mechanical patents (JA 73-79) that had very little in their design, common with his new design. The testimony is clear and has not been refuted that all that can be found in the prior art patents is, a suggestion of one feature in one patent, and another feature in another patent, and a third feature in a third patent, which clearly indicates that appellants' design is not anticipated or taught in any *single* reference or illustration or in anything found to exist in the prior art.

A causal inspection of the external configuration and contour of the references cited in the refusal to allow the design claim, clearly shows that appellants' proposed ornamental design is not found in any single reference. The refusal to allow the claim for this design of the socket for a socket wrench is predicated upon finding in the prior art, shapes or lines, for example, in one patent, a cylindrical shape, and in another patent, an opening, etc.

The Court of Customs and Patent Appeals in *In re Davis,* 173 F.(2d) 1016, and *In re Jennings,* 182 F.(2d) 207, has clearly stated the law relating to design patents. Both decisions emphasize the necessity of considering the overall appearance of a design.

Chief Judge Garrett in discussing a design application for a vacuum condenser, *In re Jennings,* before the Court of Customs and Patent Appeals, clearly reiterated the law. The design involved the configuration of a glass envelope, the body of which was of generally cylindrical shape, and its other parts involved thin, rod-like conductors extending through inwardly disposed projections within the ends of the envelope supporting other parts. The Patent Office in this case had relied upon five mechanical patents, one for an electron discharge device, another for a short-wave radio tube and others for electrical devices including glass envelopes. According to Judge Garrett's decision, the Patent Office seemed to consider only the analogy of the mechanisms of the several reference patents for utility rather than the general over-all appearance, in the denial of the claim. The Board of Appeals in that case also seemed to be concerned with the utilitarian and manufacturing aspects of the vacuum condenser, in spite of the Board's protestations to the contrary.

Judge Garrett properly interpreted the intent of the Design Patent Statute in deciding to reverse the Board of Appeals of the Patent Office, stating:

> "In considering patentability of a proposed design the appearance of the design must be viewed as a whole, as shown by the drawing or drawings, and compared with something in existence—not with something that might be brought into existence by selecting individual features from prior art and combining them, particularly where combining them would require modification of every individual feature, as would be required here."

The Patent Office in refusing appellants' design stumbled into the same pitfall pointed out by Judge Garrett "by selecting individual features from the prior art and combining them" and further by the Patent Office refusing, in determining patentability of proposed design, to consider "the appearance of the design . . . as a whole". As a whole, appellants' distinctive appearing socket wrench, its external configuration and contour, does not resemble and could not be confused with the structures of the patents which the Patent Office cited in the refusal to allow the claim. The District Court erred in not applying the law of design patents properly.

The dismissal of the complaint by the Trial Court was not accompanied by an opinion. A post card notice from the Clerk's office advised that the Court would find for the defendant and directed the attorney for the defendant to submit proposed findings of fact and conclusions of law, as well as a proposed order (JA 5). This was done by the attorney for the defendant on Friday, June 30, 1961 (JA 9), and signed by the Judge in the District Court on Saturday, July 1, 1961 (JA 9). Needless to say, the findings of fact drafted by the attorney for the defendant (JA 5-8) reflected the erroneous position as to the law applicable to design inventions such that to have objected to them would have practically meant retrying the case in the District Court. The conclusions of law (JA 9) proposed by the attorney for the defendant and adopted by the Court are also in error as to the interpretation of the law of design inventions applied to the facts in this case. The statement of points designating the errors, i.e., 1, 2, 4, 5, 7, 8, 9, 10, 11 and 12, are clearly set forth above. The law applicable to a design invention is clearly set forth above in this argument. Judge Garrett in *In re Jennings, supra,* very clearly stated the law and pointed out that a design invention should be viewed as a whole, not with a piecemeal consideration of elements of the design in view of elements of prior art references. The District Court appeared to completely ignore the evidence of commercial success set forth above in its consideration of this design which, while relating to a limited field of tools, weighs very heavily.

The District Court erred in admitting defendant's exhibit 3 (JA 80) at the trial, over the objection of plaintiff-appellants on the ground that the exhibit was defensive material which had not been pleaded in defendant's answer (JA 26-29). Plaintiff-appellants objected to exhibit 3, calling the Court's attention to Rule 12(h) of the Federal Rules of Civil Procedure, pointing out that inasmuch as the exhibit had not been set forth in the answer and defendant had not taken advantage of the proper procedure set forth in Rule 12(h), the exhibit should not be entered and the defendant should be considered to have waived this defense. The admission of exhibit 3 only added to the confusion of the Court wherein the difficulty with the technical terminology of the tool art was quite apparent in the record (JA 19, 21, 22, 26). When the witness Mr. Wright was examined on this exhibit 3, after it had been admitted by the Court over the objection of his counsel, defendant's counsel endeavored to elicit from the witness that concave ends were the same as a "chamfered bevel" to aid in guiding the sockets onto the nut (JA 29-30). The witness endeavored to point out that a chamfered bevel on the edge of the opening to receive the nut was something quite different in design and appearance from the appearance of appellants' socket. It is clear from the record that defendant's counsel in the trial before the District Court was endeavoring to inject the element of utility into the consideration of novelty of design to further confuse the Court.

It is well known that a design invention is judged on its external configuration and contour, and arguments at any stage of the consideration of a design invention in the Patent Office or in the Courts with reference to utility are not considered. The ornamental design of an object, be it a statue or a tool, need not have utility. Early in the cross-examination of the witness, it was the position of defendant's counsel, as evidenced by the examination, that he was trying to relate the utility of lines, shapes and contours of the new design of the socket to bits and pieces of the prior art tools relied upon as references.

Defendant's counsel, over the objection of plaintiffs' counsel which was overruled by the District Court, throughout the cross-examination led the witness through a discussion of the inventive design and a discussion of the prior art patents, emphasizing in all cases the utility of certain lines, shapes, and features, to the confusion of the Court (JA 20-26). Defendant's counsel applied the prior art references bit by bit to portions and elements of the design, which was improper in view of the law governing design inventions. The action of defendant's counsel was permitted by the Court, constituting the errors designated as 13 and 14 in the statement of errors. The witness in several instances endeavored to explain that the utilitarian functions were not a consideration in the design because the use of sockets for socket wrenches of any design are generally the same. This point of interpretation of the design patent statute was apparently missed, overlooked, or ignored by defendant's counsel and the District Court erred in not following the law as laid down in Judge Garrett's opinion in *In re Jennings,* discussed above. The action of defendant's counsel throughout the trial in emphasizing features of utility of the design before the Court and the elements and features of the prior art patents and references is directly contrary to the position taken by defendant's counsel in his brief before the District Court, wherein he stated on page 10:

> "A design patent cannot properly be granted for the protection of features of utility.
>
> *In re Eifel,* 17 CCPA 582, 35 F.2d 70;
>
> *Connecticut Paper Products, Inc.* v. *New York Paper Co.,* 127 F.2d 423 (4th Cir., 1942);
>
> *Smith* v. *Dental Products Co., Inc., et al.,* 140 F.2d 140 (7th Cir., 1944)."

It is appellants' position that the improper emphasis on utilitarian features of the new design and of the prior art references and patents misled the District Court as to the nature and meaning of a design invention.

It is appellants' position that the Commissioner of Patents has erroneously refused appellants the protection sought under the design patent statute, 35 U.S.C. 171, for their initiative and investment in the novel design of the socket. Appellants' design represents the first innovation in this particular field of tools in approximately the last half century. Appellants complied fully with the statute in seeking protection for the novel design, and should be accorded the protection sought for their initiative and investment from piracy by their competition.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the decision of the trial court be reversed.

Respectfully submitted,

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BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Appeal No. 16,668

RICHARD B. WRIGHT and THE WRIGHT
TOOL AND FORGE COMPANY,
APPELLANTS

v.

DAVID L. LADD, Commissioner of Patents,
APPELLEE

**Appeal from the Judgment of the United States
District Court for the District of Columbia**

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United States Court of Appeals
[illegible]

FILED JAN 16 1962

Joseph W. Stewart
CLERK

Appeal No. 16,668

STATEMENT OF QUESTIONS PRESENTED

In the opinion of the appellee, the questions presented are:

(1) Was the District Court clearly wrong in holding, on the evidence before it, that appellants' claimed design fails to show patentable design invention over the disclosures of the Orey *et al.* patent No. 2,549,515, Hanes *et al.* patent No. 838,109 and Grenat patent No. 2,605,665?

(2) Was the District Court clearly wrong in holding, on the evidence before it, that appellants' claimed design fails to show patentable design invention over the disclosures of Orey *et al.* patent No. 2,549,515, Hanes *et al.* patent No. 838,109 and Grenat patent No. 2,605,665, further in view of the additional disclosure of Catalog TR of the Snap-On Tools Corporation?

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BRIEF FOR APPELLEE

INTRODUCTION

The appellants appeal from a judgment (J.A. 9) of the United States District Court for the District of Columbia dismissing the complaint (J.A. 2) in an action brought under Section 145 of Title 35, United States Code (Act of July 19, 1952, c. 950, 66 Stat. 803). In the action the appellants, Richard B. Wright and The Wright Tool and Forge Company, sought to have the District Court authorize the issuance of a design patent on the Wright application, Serial No. D-42,897 (J.A. 40), containing the single claim therein. The District Court and the Board of Appeals refused to allow the claim for the reason that the claim fails to define patentable design invention over the prior art.

COUNTER-STATEMENT OF THE CASE

Since the "Statement of the Case" in the brief for appellants (pages 2-3) omits the essential facts material to the consideration of the questions presented, a counter-statement of the material facts is deemed necessary.

Appellants' application

Appellants' application (J.A. 40-41) relates to a design for a socket wrench formed from a "socket" connected to a detachable handle. The design as illustrated in the application drawing (J.A. 40a) shows a socket wrench having a cylindrical external shape and a square hole through the socket from end to end. From one end of the socket a shallow V-shaped groove in the middle of each of the four sides of the hole extends about one-half the length of the socket. Both ends of the socket are concave.

The prior art

The Orey *et al.* patent, No. 2,549,515 (J.A. 77-79), relates to socket wrenches and discloses in Fig. 2 a socket 4 intended to be connected to a detachable handle, shown in Fig. 1, to form a socket wrench. The socket has a cylindrical external shape and a hole extending through the socket from end to end. At one end of the socket the hole, as shown in Fig. 2, is a cylindrical bore provided with slots 6, 6 to fit over corresponding spline keys 5 on a handle drive member 2. At the other end of the socket, as shown in Fig. 3, the hole has flat sides which fit the sides of a nut to be driven.

The Hanes *et al.* patent, No. 838,109 (J.A. 76-77), discloses in Fig. 4 a bit D, or socket, intended to be connected to a detachable handle A to form the rachet wrench shown in Fig. 1. The bit, or socket, D has a square hole D^3 extending through the bit from end to end, as shown in cross section in Fig. 2. From one end of the bit D a shallow V-shaped groove D^4 in the middle of each of the four sides of the hole extends about one-half the length of the bit. At the other end of the bit the square hole fits over the square end B^2 of a male socket-connecting member on the handle A. The patent points out (J.A. 77, lines 69-75 and 79-82) that the shallow V-shaped grooves D^4 allow the bit to fit either a hexagonal nut or a square nut, as indicated in Fig. 1 by dotted lines representing a hexagonal nut. The patent also indicates (J.A. 76-79) that bits, or sockets, of different sizes may be used with the handle.

The Grenat patent, No. 2,605,665 (J.A. 73-75), discloses a wrench provided with jaw members 4. The jaw members 4 are provided with internal sockets 6 which the patent drawing (J.A. 73) shows are square with a V-shaped groove in the middle of each of the four sides.

The claim on appeal

The single claim in the application and on appeal (J.A. 40) specifies "the ornamental design for a socket wrench as shown."

The grounds for refusal of the claim

Both the Board of Appeals (J.A. 65-67) and the District Court (J.A. 5-9) found that the claim fails to define patentable design invention over the Orey *et al.* patent (J.A. 77-79) in view of the Hanes *et al.* patent (J.A. 76-77) and the Grenat patent (J.A. 73-75). The District Court (J.A. 5-9) also found further evidence of unpatentability of the claim in the publication, "Catalog TR" of the Snap-On Tools Corporation (J.A. 80-83).

THE STATUTE AND RULES INVOLVED

In this appeal, Sections 171 and 103 of Title 35, United States Code, are the relevant parts of the patent statute involved. Section 171 is set out in the brief for appellants on page 3. Section 103 is set out in the subjoined appendix.

Rules 12(h) and 52(a) of the Federal Rules of Civil Procedure are involved. Since only an excerpt from Rule 12(h) appears in the brief for appellants (page 4), the rule is set out in full in the appendix. Rule 52(a) is set out in the appendix.

SUMMARY OF ARGUMENT

Appellants have the burden of showing that the District Court was clearly in error in finding the claimed design lacking in patentable invention. Appellants have failed to sustain that burden here.

The Orey *et al.* patent discloses a socket having the general overall appearance of a cylindrical socket with a hole extending through the socket from end to end, similar to the general overall appearance of the claimed design. The only substantial difference in appearance is that in the claimed design the configuration of the hole is square with a shallow V-shaped groove extending from one end of the socket in the middle of each of the four sides of the hole. A person of ordinary skill in the art of designing socket wrenches would find it obvious to modify the configuration of the hole in the Orey *et al.* socket to provide the appearance of the claimed design.

The disclosure in the patent to Hanes *et al.* of a socket having a square hole for connecting one end of the socket to a handle having a square connecting part, and shallow V-shaped grooves in the four sides of the nut-engaging end of the hole so that the socket will fit both square and hex nuts interchangeably, would suggest such a configuration for the hole in the socket of Orey *et al.* The patent to Grenat also would suggest a square configuration with shallow V-shaped grooves for the hole in the socket of Orey *et al.*

In the claimed design the slight curvature of the end faces of the socket, not found in the socket of

Orey *et al.*, does not substantially affect the overall appearance of the claimed design and hence is of no patentable significance. Even if the curvature of the end faces is thought to contribute substantially to the overall appearance of the claimed design, the disclosure of such a curvature in Catalog TR of the Snap-On Tools Corporation would suggest providing a curvature for the end faces of the socket of Orey *et al.*

Appellants' claimed design is a combination of old forms and configurations. The combination of old forms and configurations would have been obvious to one having ordinary skill in the art since in the combination there is produced no unexpected or unobvious ornamental appearance which is attributable to the combining, or putting together, of the old forms and configurations.

The record before this Court does not establish that public acceptance of sockets embodying the claimed design is attributable to eye appeal and distinctiveness of the claimed design. Even if such eye appeal and distinctiveness of the claimed design were established, it does not necessarily follow that the claimed design is patentable.

The record shows that in the claimed design the square configuration of the hole with the V-shaped grooves constitutes nothing more than a necessary response to the functional requirements of fitting both square and hex nuts interchangeably at one end of the hole and a square connecting part of a wrench handle at the other end of the hole. Under the design statute patentability cannot be predicated on such a configuration.

Commercial success of sockets embodying the claimed design has no significance here since there would appear to be no doubt that the claimed design is unpatentable over the prior art. Moreover, the record does not demonstrate that commercial success is attributable to the claimed appearance of the socket.

ARGUMENT

Appellants' burden of proof

The District Court found (J.A. 5-9), and the Board of Appeals likewise found (J.A. 65-67), that appellants' claimed design is not patentable over the prior art. This Court has said in *Abbott et al.* v. *Coe,* 71 App. D. C. 195, 109 F.2d 449, with respect to a district court's finding of non-patentability, that "under the rule settled in this jurisdiction, while we are not absolutely bound by a chancellor's findings of fact, we do not disturb them on appeal unless upon an examination of the evidence they are clearly wrong." The decision in *Standard Oil Development Co.* v. *Marzall,* 86 U. S. App. D. C. 210, 181 F.2d 280, further indicates that the District Court's findings of non-patentability will be set aside on appeal only where they are clearly erroneous. Later decisions of this Court to the same effect are *Esso Standard Oil Company* v. *Sun Oil Co., et al.,* 97 U. S. App. D. C. 154, 229 F.2d 37, and *Switzer* v. *Watson,* 102 U. S. App. D. C. 145, 251 F.2d 386. Also in point is Rule

52 (a) of the Federal Rules of Civil Procedure. Moreover, this Court has indicated that a Patent Office finding is not to be overturned if there is rational basis for it in the evidence before the District Court. *Abbott et al.* v. *Coe, supra*; *Standard Oil Development Co.* v. *Marzall, supra*; *Esso Standard Oil Co.* v. *Sun Oil Co., et al., supra.* Appellants accordingly have the burden of proving that there is no rational basis in the evidence before the District Court for its finding concurring with the Board of Appeals that their claimed design is unpatentable.

It is submitted that appellants have not sustained that burden. Specifically, it is submitted that the Board of Appeals properly found appellants' claimed design unpatentable on the record before it, and that the District Court correctly found that the evidence before it provided no basis for overturning the decision by the Board of Appeals.

Unpatentability over the prior art

Comparing the claimed design shown in appellants' drawing (J.A. 40a) with Figure 2 of the Orey *et al.* patent (J.A. 77), it is apparent that both appellants' socket and the socket 4 shown in the Orey *et al.* patent create the same general impression of a cylindrical socket with a hole extending through the socket from end to end. The only significant difference in appearance is in the configuration of the hole. In appellants' socket the hole is square and has shallow V-shaped grooves extending from one end of the hole. It is respectfully submitted that the Board of Appeals and the District Court were correct in finding (J.A.

65-67 and 7-8) that such a configuration, not found in the Orey *et al.* socket, would have been obvious to a person of ordinary skill in the art.

The Board of Appeals found (J.A. 66-67) that, in the light of the disclosures in the Hanes *et al.* patent (J.A. 76) and the Grenat patent (J.A. 73) of a configuration quite similar to the configuration of the hole in the claimed design, modification of the Orey *et al.* socket to provide such a configuration is well within the competency of the routine designer. Clearly a person having ordinary skill in the art of designing socket wrenches could be expected to choose a configuration for the hole matching the shape of the connecting member on the handle used with the socket and the shape of the nut the socket is to fit. Such a person obviously would use a hole having a square configuration for connecting the socket to a handle provided with a square male socket-connecting member. The Orey *et al.* patent suggests (J.A. 78, column 2, lines 5-9) that the end of socket 4 which fits on the handle may have an internal shape corresponding to any conventional type of interconnection used for connecting the socket to the handle. Such a person also would obviously provide a shallow V-shaped groove in the middle of each of the four sides of the nut-engaging end of the hole and extending about one-half the length of the hole so that the socket can be used to turn both square and hex nuts of the same diameter. The Hanes *et al.* patent (J.A. 76) is evidence suggesting a square hole for connecting a socket to a handle and shallow V-shaped grooves in the four sides of the nut-engaging half of the hole for permitting both square and hex nuts of the same diameter to be turned by the socket. The Grenat patent (J.A. 73) is additional evidence suggesting V-shaped grooves in the sides of the nut-engaging half of a square socket wrench hole.

Appellants presented no evidence showing error in the view of the Board of Appeals (J.A. 67) that, in the light of the Hanes *et al.* and Grenat patents, modification of the hole in the socket of Orey *et al.* would be well within the competency of the routine designer. The witness Wright's testimony (J.A. 19) that the ratchet wrench disclosed by Hanes *et al.* (J.A. 76) is an "obsolete type of wrench" clearly is no indication that one seeking to modify the hole in the socket of Orey *et al.* to permit accommodating a square handle-connecting member and for adapting the hole to fit both square and hex nuts would find no suggestion in Hanes *et al.* His further testimony (J.A. 19) that the ratchet wrench shown by Hanes *et al.* is not actually a socket wrench is refuted by his reference (J.A. 16) to the handle used with sockets of his claimed design as a "ratchet wrench". Moreover, the witness' admissions (J.A. 33-34) that in designing sockets the configuration of the hole is governed by the configuration of the nut, and that a square male member on the handle for connecting the handle to a socket is conventional, would seem to support the view taken by the Board. It is therefore submitted that the District Court was correct in finding (J.A. 7-8, Findings of Fact Nos. 9 and 16) that in the claimed design the configuration of the hole, not found in Orey *et al.*, would have been obvious to one having ordinary skill in the art in view of the Hanes *et al.* and Grenat patents.

The only other feature of appellants' socket (J.A. 40a), not found in the socket 4 of Orey *et al.* (J.A. 77), is a slight curvature of the end faces of appellants' socket. The record does not show that this feature significantly affects the overall appearance of appellants' socket. It is apparent that the curved surfaces of the end faces are only a small fraction of the total area of the socket and that the curvature is slight. There is no evidence that the average observer would find a significant difference in overall appearance if those ends had been flat instead of curved.

It is suggested that the Board of Appeals and the District Court thus were clearly correct in finding (J.A. 67; J.A. 7, Finding of Fact No. 5) that this slight curvature of the end faces, or dished ends, does not significantly affect the overall appearance of the claimed design. It is well settled that patentability of a design is to be judged by its appearance as a whole and not by details which do not contribute substantially to the overall appearance. *Gorham Company* v. *White*, 81 U.S. 511; *In re Shraubstadter*, 26 App. D.C. 331. There is, accordingly, no patentable significance in the slight curvature of the end faces of appellants' socket.

In addition to concurring with the Board of Appeals in finding the claim in issue unpatentable over Orey *et al.* in view of Hanes *et al.* and Grenat (J.A. 7-8, Finding of Fact No. 9), the District Court found additional evidence of unpatentability in "Catalog

TR" of the Snap-On Tools Corporation (J.A. 7, Finding of Fact No. 7). The catalog (J.A. 80) shows sockets (J.A. 82 and 83) having a slight curvature in an end face and thus suggests providing the end faces of the socket 4 of Orey *et al.* with a slight curvature. It is submitted that the District Court was thus clearly correct in finding (J.A. 8, Finding of Fact No. 10) the claimed design unpatentable over Orey *et al.* in view of Hanes *et al.*, Grenat and "Catalog TR".

The alleged misapplication of the law as to patentability of a design

Appellants contend (Br. 12-14), under the asserted authority of *In re Davis*, 36 CCPA 1010, 173 F.2d 1016, and *In re Jennings*, 37 CCPA 1023, 182 F.2d 207, that the Board of Appeals erred in that the Board did not compare the claimed design as a whole with something in existence but instead compared the claimed design with something that might be brought into existence by selecting and combining individual features from the prior art. The record, however, does not support such a contention. The Board of Appeals did indeed compare the claimed design as a whole with something in existence in finding (J.A. 67) that "the general overall appearance of the cylindrical socket wrench 4, as depicted in Figures 2 and 3 in Orey *et al.* is, in our opinion, strikingly similar to that illustrated in appellants' drawings." That the Board of Appeals was correct in finding similarity in overall appearance of the claimed design and socket 4 of Orey *et al.* is apparent from a comparison of Fig. 3 of appellants' drawing (J.A. 40a) and Fig. 2 of Orey *et al.* which show the same general appearance of a cylinder with a hole extending from one end to the other.

Appellants have presented no significant evidence tending to establish that the Board of Appeals was in error in finding such similarity in general overall appearance of the claimed design and socket 4 of Orey *et al.* Appellants contend in their brief (page 12) that the witness Wright testified that the three prior art patents relied upon by the Board of Appeals "had very little in their design, common with his new design." However, the testimony (J.A. 18) with reference to the Orey *et al.*, Hanes *et al.* and Grenat patents, to the effect that none of them resembles his design at all closely, is merely an expression of the witness' opinion on a conclusion which was for the District Court to decide and which may not be determined by the opinion of experts. Such testimony is entitled to no weight. *Minnesota Mining & Mfg. Co.* v. *Carborundum Co.*, 155 F.2d 746 (CCA 3); *In re Voit et al.*, 33 CCPA 737, 152 F.2d 987. The witness' testimony (J.A. 19) directed specifically to Orey *et al.* that he found nothing in that patent resembling his socket is similarly an expression of opinion which is entitled to no weight and further is obviously inaccurate.

The District Court found further indication of unpatentability in the absence in the claimed design of any unexpected or unobvious ornamental appearance (J.A. 8, Findings of Fact Nos. 11 and 12).

The District Court found that every feature of the claimed design is old, and that the claimed design is a combination of old forms and configurations (J.A. 7, Findings of Fact Nos. 6, 7 and 8). It is urged that these findings are amply supported by the record before this Court. The Orey *et al.*, Hanes *et al.* and Grenat patents and the catalog of the Snap-On Tools Corporation clearly disclose every feature of the claimed design. Moreover, the witness Wright in his testimony admitted (J.A. 20-21) that the cylindrical shape of his socket design was old, that the square configuration for the hole was old, that the V-shaped grooves extending from one end of the hole were old, and that the curvature of the end faces was old.

Appellants contend (Br. 12-13) that the finding of one feature in one patent and another feature in another patent is not a proper basis for the refusal of the claim in issue. However, it is well settled that where a design is a combination of old features, a number of references may be combined to show that the combination of old features is not the product of inventive talent. *Kurzen* v. *Marzall*, 88 U.S. App. D.C. 274, 188 F.2d 673, cert. denied 342 U.S. 823; *In re Jabour*, 37 CCPA 1084, 182 F.2d 213; *In re Faustmann*, 33 CCPA 1065, 155 F.2d 383. Patentability may reside in the manner in which old features are combined, and the question is whether, considering the claimed design as a whole, the old features have been combined to produce an overall appearance quite different from anything in the prior art and not merely an overall appearance which the average observer would take to be merely a modification of an already existing design; patentable design invention is not present unless in the combination of old features there is produced an unexpected or unobvious ornamental appearance which is due to the combining, or putting together, of those old features. *In re Faustmann*, supra; *Knickerbocker Plastic Co., Inc.* v. *Allied Molding Corp.*, 184 F.2d 652 (2d Cir. 1950); *Metallizing Engineering Co., Inc.* v. *General Screw Machine Products, Inc.*, 93 F.S. 878 (D.C. D. Mass. 1950). Later decisions of the Court of Customs and Patent Appeals are to the same effect: *In re Johnson, Jr.*, 36 CCPA 1175, 175 F.2d 791; *In re Jabour*, supra; *In re Warren*, 39 CCPA 858, 194 F. 2d 719. As indicated in the opinion in *In re Faustmann*, supra, this test for patentable invention is a test of obviousness.

Appellants presented no evidence that in the claimed design there is any unexpected or unobvious ornamental appearance, and it is believed apparent that in the claimed design the cylindrical external shape, the square configuration of the hole with V-shaped grooves at one end, and the slight curvature of the end faces are features presenting nothing more than the appearance each presents separately in the Orey *et al.*, the Hanes *et al.* and the Grenat patents and the Snap-On Tools Corporation catalog. It is accordingly submitted that the District Court correctly found further indication of unpatentability in the absence in the claimed design of any unexpected or unobvious ornamental appearance which can be attributed to the combining of the old forms and configurations in the claimed design (J.A. 8, Findings of Fact Nos.

11 and 12). Further, in view of the foregoing, it is submitted to be clear that the District Court and the Board of Appeals properly relied upon more than one prior art patent in refusing the claim in issue for lack of patentable design invention over the prior art.

The alleged eye appeal and distinctiveness of appellants' design

Appellants indicate (Br. 9-12), with reference to the testimony of the witness Wright, that the claimed design was developed to provide "eye appeal" and "distinctiveness." Appellants assert that evidence of record (J.A. 14-17, 69-71), presented for the purpose of showing public acceptance of sockets embodying the claimed design in preference to the conventional design, is "certainly good evidence of the distinctiveness and eye appeal of the new design." All that evidence is, it is submitted, essentially immaterial to the question of patentability. Even if it has been shown that public acceptance of sockets embodying the claimed design is attributable to eye appeal and distinctiveness of the claimed design, it does not follow that the design is patentable. In holding an alleged design invention unpatentable over prior art, the Court of Customs and Patent Appeals in *In re Eppinger*, 25 CCPA 843, 94 F.2d 401, made the following statement, submitted to be equally appropriate here:

> "We think appellant in his contentions here disregards the necessity for the exercise of the inventive faculties in producing a patentable design. Carried to their logical conclusion, appel-

> lant's contentions are to the effect that one must be regarded as a design inventor if he produces a design which has a pleasing effect and which differs in appearance from any prior production, irrespective of any other consideration. The design patent law grants a limited monopoly to a design *inventor.* The purpose of the enactment, obviously, was to stimulate the exercise of the inventive faculty in the improvement of the appearance of articles of manufacture. Invention consists in something more than good draftsmanship and extended research for new appearances."

See also *Nat Lewis Purses, Inc.* v. *Carole Bags, Inc.*, 83 F.2d 475 (2 Cir. 1936), and *In re Rousso*, 42 CCPA 910, 222 F.2d 729.

In any event, the evidence presented by appellants does not justify the conclusion that public acceptance is due to eye appeal and distinctiveness of the claimed design. The witness Wright testified (J.A. 32-33) that the name "Ten Point Socket" for sockets embodying the claimed design is a "trick" name for attracting attention to the sockets. Appellants' exhibit 2 (J.A. 69), a copy of a page from a Montgomery Ward catalog, refers to sets of sockets embodying the claimed design as "Dual Purpose" sets and stresses the advantage of a single set of sockets for both square and hex nuts. Appellants' exhibit 4 (J.A. 71) is no more evidence of willingness of buyers to pay a higher price for Ten Point Sockets because of their eye appeal and distinctiveness than of a willingness to pay more for a set which will do the work of two conventional sets (J.A. 53, 54).

The question of utility

There is no substance in appellants' contention (Br. 6, 15-16) that it was error for the District Court to consider the question of utility of the claimed design, and to permit cross-examination of the witness Wright on the question of utility, on the asserted ground that the ornamental design of an object need not have utility. A design patent cannot properly be granted where the configuration of a design is made imperative by the utilitarian purposes of the device designed, and, hence, is nothing more than a necessary response to the purpose of the device; *In re Eifel*, 17 CCPA 582, 35 F.2d 70; *Connecticut Paper Products, Inc.* v. *New York Paper Co.*, 127 F.2d 423 (4th Cir. 1942); *Smith* v. *Dental Products Co., Inc., et al.*, 140 F.2d 140 (7th Cir. 1944). The Board of Appeals found (J.A. 67) that the interior construction of appellants' wrench appears to be "due entirely to functional requirements" and that appellants' design has not produced "a substantially different aesthetic effect from the designs of the references." This finding by the Board of Appeals is clearly supported by the record before the Patent Office. The Hanes *et al.* patent (J.A. 76) is evidence that in the claimed design the square configuration of the hole with V-shaped grooves extending from one end of the hole is nothing more than a necessary response to the functional requirements of fitting both square and hex nuts interchangeably at one end of the hole and a square handle-connecting member at the other end of the hole. Hanes *et al.* disclose no ornamental purpose for any part of the configuration of the hole.

Further, the Wright Tool Catalog (J.A. 52-61) repeatedly stresses the function of the square configuration of the hole with the V-shaped grooves for interchangeably fitting both square and hex nuts.

In the District Court appellants had the burden of proving that there was no rational basis for the finding by the Board of Appeals that in the claimed design the configuration of the hole appears to be due entirely to functional requirements. It is accordingly submitted that the District Court properly considered the question of utility and properly permitted cross-examination on the question of utility. Moreover, from the foregoing it is apparent that there is no support in the record before this Court for appellants' suggestion (Br. 15) that "defendant's counsel in the trial before the District Court was endeavoring to inject the element of utility into the consideration of novelty of design to further confuse the Court."

Appellants presented no evidence tending to establish that in the claimed design there is any element of form or configuration which is not a necessary response to functional requirements. To the contrary, the witness Wright indicated on cross-examination (J.A. 33-34) that, in designing sockets, the configuration of the hole is governed by the shape of the nut to be turned and the shape of the connecting member of the handle for the socket. It is accordingly further submitted that the District Court correctly found that in the claimed design the square configuration of the hole with V-shaped grooves at one end is provided for the purpose of fitting both square and hex nuts interchangeably at one end of the socket and a square handle-connecting member at the other end (J.A. 8, Finding of Fact No. 13), and, hence, that such configuration is due solely to functional requirements (J.A. 8, Finding of Fact No. 14).

The allegation of error in the admission of appellee's exhibit 3

Appellants contend (Br. 5, 14-15) that the District Court erred in admitting appellee's exhibit 3, "Catalog TR" of the Snap-On Tools Corporation (J.A. 80), over appellants' objection that the catalog had not been pleaded as a defense and therefore was waived under Rule 12(h) of the Federal Rules of Civil Procedure.

The Board of Appeals found (J.A. 66-67) the claimed design not patentable over the prior art. As additional evidence of the prior art, the catalog in dispute shows that a slightly curved end face is a feature of the claimed design that is old in the art. The catalog thus is not an additional defense but rather is evidence providing additional support for the finding by the Board of Appeals that the claimed design is unpatentable over the prior art. Accordingly, Rule 12(h) does not support appellants' objection to the admission of the catalog in evidence as a defense not pleaded in the answer. Moreover, a civil action under 35 U.S.C. 145 is a trial de novo in which additional evidence may be received and considered; *American Steel and Wire Co. of N. J.* v. *Coe,* 70 App. D.C. 138, 105 F.2d 17. This Court has further held in *Radtke Patents Corp.* v. *Coe,* 74 App. D.C. 251, 122 F.2d 937, that the District Court may consider, sua sponte, an issue of patentability not raised by the pleadings and may consider evidence outside the record. Accordingly, it is urged that the District Court correctly overruled appellants' objection and properly admitted and considered appellee's exhibit 3.

Commercial success

Appellants contend (Br. 14) that the evidence of commercial success carries great weight and appeared to be completely ignored by the District Court. The evidence of record as to commercial success includes (1) the testimony of the witness Wright (J.A. 15) that sales of sockets embodying the claimed design amounted to about $93,000 over the last two years, (2) a Montgomery Ward purchase order (J.A. 70) showing how sockets embodying the claimed design are reordered from time to time (J.A. 18), and (3) a memorandum (J.A. 71) by a Mr. Bauer, identified (J.A. 31) as the sales manager of the appellant Wright Tool and Forge Company, showing the comparative prices and sales volumes of sockets embodying the claimed design and conventional sockets made by the Wright Tool and Forge Company.

The record before this Court does not justify the conclusion that such commercial success was the result of the claimed appearance of appellants' socket design. The Montgomery Ward catalog (J.A. 69) strongly emphasizes the advantage that the claimed design provides a single set of sockets for fitting both square and hex nuts as an inducement to buy. Catalog 57 of the Wright Tool and Forge Company (J.A. 52-61) stresses the same advantage, pointing out

(J.A. 54) that a set of thirteen sockets will do the work of twenty-six ordinary sockets at less cost. The witness Wright testified (J.A. 32-33) that the name Ten Point Socket is a trick name for attracting attention to sockets embodying the claimed design. The record thus points to factors other than the claimed appearance of the socket design which may well have led to commercial success and clearly supports the finding by the District Court (J.A. 8, Finding of Fact No. 15) that it has not been shown that commercial success of appellants' sockets was the result of the claimed appearance of the sockets.

Evidence which does not justify the conclusion that commercial success was attained as the result of the claimed appearance of a design is immaterial to the question of patentability of the design. *In re Weil*, 40 CCPA 788, 201 F.2d 946; *Knickerbocker Plastic Co., Inc.* v. *Allied Molding Corp.*, supra. It is submitted that there is no significant evidence before this Court of commercial success tending to show patentability of the claimed appearance of appellants' socket design.

Moreover, commercial success is significant only where there is doubt on the question of patentability and cannot take the place of invention where invention is lacking. Such success can only corroborate where there is a doubt and cannot be relied upon to create a doubt and then resolve that doubt in favor of patentability. *Union Metal Co.* v. *Ooms,* 81 U.S. App. D.C. 76, 154 F.2d 857; *The Great Atlantic and Pacific Tea Co.* v. *Supermarket Equipment Corp.*, 340

U.S. 147; *In re Kluter*, 25 CCPA 730, 92 F.2d 906. It is submitted that commercial success could have no significance here since the record does not justify any doubt that the claimed design is unpatentable over the prior art. Neither the Board of Appeals nor the District Court gave any indication of doubt on the question of patentability.

CONCLUSION

It is respectfully submitted that, for the foregoing reasons, the conclusions reached by the Board of Appeals and the District Court that the claimed design is not patentable over the patents cited in the decision of the Board of Appeals are correct and have a reasonable basis in the record; that the District Court correctly found additional evidence of non-patentability in Catalog TR of the Snap-On Tools Corporation; and that under the standard of review stated by this Court in *Abbott et al.* v. *Coe,* supra, and *Standard Oil Development Co.* v. *Marzall,* supra, the judgment of the District Court should be affirmed.

APPENDIX

Section 103 of Title 35 of the United States Code:

> § 103. Conditions for patentability; non-obvious subject matter.
>
> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Rule 12 (h) of the Federal Rules of Civil Procedure:

> (h) Waiver of Defenses. A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light

of any evidence that may have been received. As amended Dec. 27, 1946, eff. March 19, 1948.

Rule 52 (a) of the Federal Rules of Civil Procedure:

FINDINGS BY THE COURT

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b). As amended Dec. 27, 1946, eff. March 19, 1948.

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